

No. 4308

United States
Circuit Court of Appeals
For the Ninth Circuit. 9

CHRISTINA M. HOEFFNER, as Administratrix of
the Estate of John H. Hoeffner, deceased,
Appellant,
vs.
NATIONAL STEAMSHIP COMPANY,
Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

AUG 13 1924

F. D. MONKTON,
CLERK

No.

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Circuit Court of Appeals
For the Ninth Circuit.

CHRISTINA M. HOEFFNER, as Administratrix of
the Estate of John H. Hoeffner, deceased,
Appellant,

vs.

NATIONAL STEAMSHIP COMPANY,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

MONAHAN & BEUM, ESQ.,
JOHN J. MONAHAN, ESQ., 212 West 6th
St., San Pedro, California.

For Appellees:

JOE CRIDER, JR., ESQ., H. W. Hellman
Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION,
IN ADMIRALTY.

CHRISTINA M. HOEFFNER, as)		
Administratrix of the estate of)		
JOHN H. HOEFFNER, deceased,)		
)
	Libellant,)	LIBEL IN PERSONAN.
vs.)	
)
NATIONAL STEAMSHIP)		
COMPANY,)		
	Respondent.)	

The libel of Christina M. Hoeffner, as administratrix of the estate of John H. Hoeffner, deceased, against National Steamship Company, now, or late owner of the Schooner or Vessel "Brunswick," in a cause of damages, civil and maritime, alleges, as follows:—

I.

That at all times, hereinafter mentioned, the Libellant was, and now is, a housewife, having her place of residence at San Pedro, California, and at the time hereinafter mentioned, the respondents were the owner of a Vessel or Schooner known as the "Brunswick." and that their residence is unknown.

II.

That during the month of April, 1922, the said Vessel "BRUNSWICK" was lying in the port of San Pedro, and was in need of unloading her cargo, consisting of lumber; that one John H. Hoeffner went on board and took up said employment, and at such

time, the said John H. Hoeffner, was employed by the master, or his agent thereof, to assist in the unloading of its cargo; that on the 15th day of April, 1922, while the said John H. Hoeffner was in said employment, and while he was engaged in making up slings of lumber so as to have them ready when the unloading should begin, the said Vessel got under way and proceeded up stream from the San Pedro Lumber Company's dock, in San Pedro Harbor, to which the Vessel had been moored, to Blinn's Lumber Dock, also in said Harbor of San Pedro; that while said John H. Hoeffner, was so engaged, and the ship was proceeding upstream as aforesaid, the sling yielded a little, so that he tripped and fell overboard; that there were no life lines or life rails on the side of said Vessel where the deceased was working, so that he could be protected; that the said Vessel negligently continued on her way after deceased was precipitated into the water, and she proceeded about five hundred (500) feet upstream before stopping; that no boat was lowered to pick up the deceased, and that there were no life buoys thrown and no effort was made, either by the master or crew of the said Vessel, to save the deceased; and that as a result thereof the deceased came to his death by drowning.

III.

That it was then and there, and at all times, the duty of the respondents to furnish, keep, and maintain a safe, sufficient and suitable place for said John H. Hoeffner to work in, and to perform said labor; to provide competent, capable and skillful seamen for the

manning of said Vessel, and to provide and maintain suitable, sufficient, and safe appliances for said seamen to perform their respective duties in the management and direction of said Vessel; and also with respects to the saving of men that are thrown overboard; but that disregarding their said duty in the premises and in this respect, the said respondents had knowingly, *carelessly*, and negligently failed to provide life rails or lines on that part of the deck where the said John H. Hoeffner was employed at the time of said accident, and had knowingly, *carelessly*, and negligently employed seamen who were not skillful in the manning and lowering of the life boat or the throwing out of life lines or life buoys for the rescuing of said John H. Hoeffner, and who were unskillful in the stopping of the vessel, or giving of signals for the stopping of vessels for the picking up and rescuing of said John H. Hoeffner; that said facts could not be known or determined by said John H. Hoeffner, from any inspection which he was permitted to make or was able to make before or at the time of performing said work, in the performance of which he lost his life, and the element of danger, resulting, or that might result from such conditions as aforesaid, was a latent and not an obvious danger.

IV.

That on the 25th day of July, 1922, by the order of the Superior Court of the County of Los Angeles, in the State of California, duly given and made, the libellant was appointed administratrix of the estate of John H. Hoeffner, deceased, and letters of adminis-

tration on said estate were ordered to issue to Libellant upon qualifying; that the Libellant thereafter, duly qualified, as such administratrix, and thereupon letters of administration were issued to Libellant on the 25th day of July, 1922, and Libellant ever since has been, and now is, the duly qualified and acting administratrix of the estate of John H. Hoeffner, deceased.

V.

That said John H. Hoeffner, left him surviving as his only heir, Christina M. Hoeffner, his widow, who was dependent upon him for support, that before his decease the said John H. Hoeffner was able to secure continuous employment at his vocation as *lonshoreman*, as aforesaid, and received therefor the sum of \$200.00 (Two hundred dollars) per month; that were it not by reason of said death, caused by said acts of said Respondents, said John H. Hoeffner would now be able to earn said sum of \$200. (Two hundred dollars) per month, and that by reason of said death, caused by said acts of the Respondents, the Libellant, the said Christina M. Hoeffner, has been injured in the amount of \$20,000.00 (Twenty thousand dollars)

VI

That said Vessel "BRUNSWICK" is now in the Harbor of San Pedro, California, and within the jurisdiction of this Honorable Court; that all and singular the premises *herin* are true and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

WHEREFORE, the Libellant prays that a monition according to the practices of this Court may issue

against the said National Steamship Company, and that it may be compelled to appear and answer upon oath all and singular the matters aforesaid, and if the said Respondents cannot be found, that an attachment may issue against his goods and chattels, and that this Honorable Court would be pleased to decree judgment of the damages aforesaid, with costs, and that the Libellant may have such other and further relief as she may be entitled to receive.

Monahan & Beum
Proctors for Libellant.

STATE OF CALIFORNIA)
) SS
County of Los Angeles)

I, CHRISTINA M. HOEFFNER, as administratrix of the estate of JOHN H. HOEFFNER deceased being first duly sworn, upon my oath depose and say: That I am Libellant in the above action; that I have read the foregoing Libel and know the contents thereof; that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe to be true.

Christina M. Hoeffner
Subscribed and sworn to before me this
29 day of Aug 1922

J. E. Beum
Notary Public in and for the
County of Los Angeles State of
California

Aug 31, 1922 Let the Process of attachment issue as prayed for.

Trippett
Judge.
Trippet

[ENDORSED]: No. 1157 Adm. In The DISTRICT COURT OF THE UNITED STATES In the SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION, CHRISTINA M. HOEFFNER, as administratrix of the estate of JOHN H. HOEFFNER, deceased, Libellant VS NATIONAL STEAMSHIP COMPANY Respondent LIBEL IN PERSONAN. FILED AUG 29, 1922. CHAS. N. WILLIAMS, Clerk By W. J. Tufts MONAHAN & BEUM 212 W. Sixth St. SAN PEDRO, CALIFORNIA Phone 1166 J Attorneys for Libellant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN ADMIRALTY

CHRISTINA M. HOEFFNER,) "
as Administratrix, of the Estate)—
of John H. Hoeffner, deceased.) No. 1157
Libellant,) CLAIM OF
vs.) NATIONAL
NATIONAL STEAMSHIP) STEAMSHIP
COMPANY,) COMPANY.
Respondent.)

And now before this Honorable Court appears National Steamship Company, owner of said ship "Bruns-

wick” her tackle, apparel, engines and her cargo and freight, by A. W. Donovan, its agent, and make claim to the said ship “Brunswick” her tackle, apparel, engines and her cargo and freight, and avers that it is now in the possession of the said ship “Brunswick” her tackle, apparel, engines and her cargo and freight, and that it is the true and bonafide owner of said ship “Brunswick” her tackle, apparel, engines and her cargo and freight, and that no other person or persons are the owner or owners thereof.

WHEREFOR it prays to defend the said suit accordingly.

NATIONAL STEAMSHIP COMPANY

By: A. W. Donovan

Agent

Joe Crider, Jr.

Clarence B. Runkle

Proctors for Claimant.

STATE OF CALIFORNIA,)
) SS.
 COUNTY OF LOS ANGELES,)

A. W. Donovan, being first duly sworn deposes: That National Steamship Company, is the true and bonafide owner of the ship “Brunswick” her tackle, apparel, engines and her cargo and freight, against which this suit has been commenced by the said Christina M. Hoeffner, Libellant, and that no other person is the owner or owners thereof; that for the purposes of this suit deponent is agent of the said owner and is duly authorized by the said owner to put in this claim and deponent further says that at the time of

the commencement of this suit the said ship "Brunswick" her tackle, apparel, engines and her cargo and freight was in his possession, as agent, and that he is the lawful bailee thereof for the owner.

A. W. Donovan

Subscribed and sworn to before me
this 2nd day of September, 1922.

Clarence B. Runkle

Notary Public in and for the
County of Los Angeles,
State of California.

(SEAL)

[ENDORSED]: #1157-Adm. DISTRICT COURT OF THE UNITED STATES STATE OF CALIFORNIA COUNTY OF LOS ANGELES Christina M. Hoeffner, as Admrx. of the Estate of John H. Hoeffner, deceased, Libellant, vs. National Steamship Co., Respondent Claim. FILED SEP 2 1922. Chas. N. Williams CHAS. N. WILLIAMS, Clerk By _____ Deputy Clerk JOE CRIDER, JR. Attorney-at-Law 333 H. W. Hellman Building, Cor. 4th & Spring Sts. Los Angeles, California Phone 61261

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA,
IN ADMIRALTY.

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate)	
of John H. Hoeffner, deceased.)	No. 1157 - Adm.
Libellant,)	
vs.)	RESPONDENT'S
NATIONAL STEAMSHIP)	CLAIM AND
COMPANY,)	ANSWER
Respondent.)	

To the Honorable Benjamin F. Bledsoe, Judge of the District Court of the United States, in and for the Southern District of California:

The answer of National Steamship Company, owner of the ship "Brunswick" to the libel of Christina M. Hoeffner against the said ship "Brunswick", in a case of tort, civil and maritime, the said respondent alleges and propounds as follows:

I.

Allege that heretofore the National Steamship Company, duly filed with this Honorable Court its verified statement of claim to the said ship "Brunswick" her tackle, apparel, engines, and her cargo and freight, claiming that said National Steamship Company was and is the true and bona fide owner of said ship "Brunswick" her tackle, apparel, engines, and her cargo and freight, and that no other person or persons is or are the owner or owners thereof;

Allege that said claimant, National Steamship Company, was at all times mentioned in Libellant's libel,

the true and bona fide owner of said ship "Brunswick" her tackle, apparel, engines, and her cargo and freight, and that no other person or persons is or are the owner or owners thereof.

II.

Respondent has no knowledge as to the allegation that Libelant is a housewife having her place of residence, at San Pedro, and therefor requires proof of the same; Admits that at all times mentioned in the libel filed herein respondent was the owner of the vessel known as the "Brunswick".

III.

Admits that during the month of April, 1922, the said vessel, "Brunswick" was in the port of San Pedro unloading a cargo of lumber.

Respondent has no knowledge as to any of the remaining allegations in Paragraph II. of the libel herein and requires proof of the same.

IV.

Denies that respondent at any time or place, as alleged in said libel or at all, has disregarded its duty or duties in the matter of furnishing or keeping or maintaining a safe, or sufficient, or suitable place for said John H. Hoeffner, to work in, or its duty or duties to provide competent, or capable, or skillful seamen for the maintaining of said vessel, or its duty or duties to provide or maintain suitable, or sufficient, or safe appliances for said seamen or any of them to perform their respective duties in the maintenance or direction of said vessel, or with respect to the saving of men that are thrown overboard; Denies that re-

spondent carelessly or negligently failed to provide life rails or lines on any part of the deck of said vessel "Brunswick", or any part of said vessel where the said John H. Hoeffner was employed at the time of said accident, or at any other time, or that it carelessly or negligently employed any seamen or seaman who were not skillful in the maintaining or lowering of any life boat or life boats, or in the discharge of their duty of operating any life line or life lines or life buoy or life buoys, for the rescue of said John H. Hoeffner, or who were unskillful in the stopping of said vessel or giving signals for the stopping of *vesells* or any vessel for the picking up or rescuing of said John H. Hoeffner; Denies that said facts or any facts could not be found or determined by said John H. Hoeffner from any inspection which he was permitted to make or was able to make before or at the time of performing said work, or in any other manner; Denies that any danger which existed, if any, was not a patent or obvious danger.

V.

Respondent has no knowledge as to the allegations contained in Paragraph IV. of said libel and requires proof of the same.

VI.

Respondent has no knowledge as to the allegations contained in Paragraph V. of said libel and requires proof of the same; Denies that libelant has been injured or damaged in the sum of Twenty Thousand and no/100 (\$20,000.00) Dollars, or in any other sum or at all, by reason of any negligence, recklessness, care-

lessness or unskillfulness on the part of respondent or any agent or servant of respondent or at all.

WHEREFORE respondent prays that this Honorable Court will pronounce against the demand of libelant in her libel above mentioned, with costs.

Joe Crider, Jr.

Clarence B. Runkle

Proctors for Claimant.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

A. W. Donovan being by me first duly sworn, deposes and says: that he is the Agent for the Respondent in the above entitled action; that he has heard read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true. He makes this verification for and in behalf of respondent

A. W. Donovan

Subscribed and sworn to before me this)
2nd day of September, 1922)
)

Clarence B. Runkle

Notary Public in and for the County of

Los Angeles, State of California

(SEAL)

[ENDORSED]: No. 1157 - Adm. In The SUPERIOR COURT OF THE STATE OF CALIFORNIA In and for the County of Los Angeles CHRISTINA M.

HOEFFNER, as Administratrix of the Estate of John H. Hoeffner, deceased. Libellant, vs. NATIONAL STEAMSHIP COMPANY, Respondent. ANSWER FILED SEP 2 1922 Chas. N. Williams CHAS. N. WILLIAMS, Clerk By_____ Deputy Clerk JOE CRIDER, JR. Attorney At Law 333 H. W. Hellman Building, Cor. 4th & Spring Sts. Los Angeles, California Phone 61261 Attorney for _____

—

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION,
IN ADMIRALTY

CHRISTINA M. HOEFFNER,)		
as Administratrix of the estate)		
of JOHN H. HOEFFNER,)		
deceased.)		AMENDMENT
Libellant,)		TO:
Vs.)		
NATIONAL STEAMSHIP)		LIBEL IN
COMPANY,)		PERSONAN.
Respondent.)		

Upon leave duly had by the court herein:

The libellant amends, the libel in personam by adding thereto on page 3, on line 32, and at the end of paragraph V. the following to wit:

And as exemplary damages, the sum of \$5000.00.

Monahan & Beum
Proctors for Libellants.

Dated December 8th, 1922.

STATE OF CALIFORNIA)
) SS
 County of Los Angeles)

I, CHRISTINA M. HOFFNER being first duly sworn, upon my oath depose and say: That I am libellant in the above action; that I have read the foregoing amendment and know the contents thereof; that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief and as to those matters that I believe to be true.

Christina M. Hoeffner

Subscribed and sworn to before me this
 8 day of December 1922.

J. E. Beum

Notary Public in and for the County
 of Los Angeles, State of California

(SEAL)

[ENDORSED]: 12/14-1922 Motion Granted Stephen G. Long UNITED STATES COMMISSIONER No. 1157 In The DISTRICT COURT OF THE UNITED STATES IN THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION CHRISTINA M. HOFFNER, at al. Libellant VS NATIONAL STEAMSHIP COMPANY Respondent. AMENDMENT TO: LIBEL IN PERSONAN. FILED DEC 14 1922 CHAS. N. WILLIAMS, Clerk By W. J. Tufts MONAHAN & BEUM 212 W. Sixth St. San Pedro, California Phone 1166 J Attorneys for_____

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT
OF CALIFORNIA SOUTHERN
DIVISION, IN ADMIRALTY.

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate)	
of JOHN H. HOEFFNER,	)	No. 1157 Civil.
Deceased)	
	)	Libellant.
	)	COMMISSION-
vs.	)	ER'S
	)	REPORT.
NATIONAL STEAMSHIP)	
COMPANY,)	
	)	Respondent.

To the Honorable, the Judges of the District Court of the United States, for the Southern District of California, Southern Division:

In pursuance to an order of reference, made in the above entitled matter by the Court, on the 6th day of November, 1922, transferring and referring said cause to me, the undersigned, for the purpose of taking testimony, making findings of fact, and recommending conclusions of law, and judgment and decree herein, and said cause, coming on before me to be heard in conformity with said order on the 27th day of November, 1922, and being thereafter duly and regularly continued by me until completed, and having been attended by the libellant, in person, and her proctor, John J. Monahan, and the respondent, having been represented by its proctor, Joe Crider, Jr., and having heard the testimony, both oral and documentary, produced on behalf of the libellant and respondent, re-

spectively, and having given careful consideration to the authorities cited in the briefs of proctors in behalf of the respective parties, and being fully advised in the premises, now report as follows:

FINDINGS OF FACT

I.

That on the 18th day of April, 1922, and all of the time thereafter, the libellant was, and is, a housewife, having her place of residence at San Pedro, California; and that on the 18th day of April, 1922, the respondent National Steamship Company was the owner of a lumber vessel called the "Brunswick".

II.

That on April 18, 1922, John H. Hoeffner, was employed by the Master of the lumber vessel "Brunswick" to assist in unloading the deck load of cargo lumber on board that vessel, then at San Pedro Lumber Company's dock, which is on the west side of the Inner Harbor, San Pedro, California; that at eight o'clock in the morning of that date, the "Brunswick" cast off from that dock to go to the Blinn Lumber Company's dock on the east side of said Inner Harbor, but it was necessary for the said vessel to proceed in a northerly direction for a short distance so as to clear a dolphin to which the U. S. Government dredge was moored.

III.

That after the "Brunswick" cast off from the San Pedro Lumber Company's dock, as aforesaid, the first mate, who had charge of unloading the lumber cargo of that vessel, ordered the said John H. Hoeffner to

slung up the lumber, and in obedience to said orders, it was necessary for him to go on top of the lumber pile, stowed fore and aft, eight or nine feet high, and extended to the full width of that part of the ship and was flush with both sides thereof. The lashings of this lumber pile had previously been removed, and the top was a disordered mass of lumber; that said John H. Hoeffner, in company with his working partner, went on top of this lumber pile, the partner working inboard, and Hoeffner on the outboard side, it being necessary to start slinging from the extreme outboard part of the lumber, and immediately upon getting to his working position, and trying to pull the slings through on the extreme starboard side of the ship, the said John H. Hoeffner stepped on a plank, which tipped, and then stepping on another plank that tipped too, and precipitated him overboard, and he was drowned.

IV.

That there were no life lines, life rails, or other protection outboard of this lumber pile, which, while a vessel was under way in a narrow harbor, and being subject to pitch or roll from the wash of propellers of other vessels, or to the sudden jar of hitting or being hit by other vessels or obstructions, was a place dangerous to life and limb for those who were required to work thereon.

V.

That the said John H. Hoeffner was precipitated overboard a few minutes after the vessel "Brunswick" got under way, as aforesaid, and that the speed of

that vessel at that time was about two or three miles per hour; that the "Brunswick" did not immediately stop when the cry of "Man overboard" was raised; that no life boat was lowered, no life preserver, life buoy, or piece of lumber was thrown from the "Brunswick" to said John H. Hoeffner, after he was precipitated overboard, and while struggling in the water, and that no efficient efforts were made to rescue him by the Master, officers and crew of the said ship "Brunswick", and that the life boats and other life saving appliances of said ship "Brunswick" were not, at the time that said John H. Hoeffner was precipitated overboard therefrom, reasonably fit and accessible to effect his rescue, and that the Master, Officers and crew of said ship "Brunswick" were incompetent and culpably inefficient in the performance of their duties in matters pertaining to the handling of the ship and in the use of the ship's life saving appliances.

VI.

That said John H. Hoeffner was engaged in the work of longshoreman for about five months, and it does not appear from the evidence, how much of that time he was employed on board ships; that he had no means of ascertaining the condition of the lumber pile on which he was required to work until he got on top thereof, when he was immediately precipitated overboard; that he had no means of ascertaining the incompetency of the Master, Officers and Crew of said ship "Brunswick" in their duties with the condition, accessibility and use of the life saving appliances of said ship "Brunswick", and that the danger resulting,

or that might result from such conditions, as afore-said, was a latent and not an obvious danger; that said John H. Hoeffner was not guilty of contributory negligence in the performance of his said work on board the said ship "Brunswick", and in no wise, while so employed, did he act otherwise than in a careful, cautious and prudent manner under the circumstances.

VII.

That said John H. Hoeffner, on the 18th day of April, 1922, and while in the employ of respondent on board said ship "Brunswick", came to his death by drowning in the Harbor of San Pedro, California; and that said death was caused by the failure of the respondent to furnish him with a safe and suitable place in which to perform said employment, and by the failure of the respondent to provide and maintain, in a reasonably fit and accessible condition, proper and efficient life saving appliances on board said ship "Brunswick", and in the failure of the respondent to provide and maintain Master, officers and crew competent and efficient in the handling of said ship "Brunswick" and in the stowage, accessibility and use of life saving appliances thereof.

VIII.

That said John H. Hoeffner, left *surviving* him as his only heir, Christina M. Hoeffner, his widow; and that said Christina M. Hoeffner was dependent upon him for support and maintenance.

IX.

That on the 25th day of July, 1922, by the order of the Superior Court of the County of Los Angeles,

in the State of California, duly given and made, the libellant was appointed administratrix of the Estate of John H. Hoeffner, deceased, and letters of administration on said Estate were ordered to issue to libellant upon qualifying, and that the libellant thereafter qualified as such administratrix, and letters of administration were issued to libellant on the 25th day of July, 1922, and libellant ever since has been and now is the duly qualified administratrix of the Estate of John H. Hoeffner, deceased.

X.

That before his decease, the said John H. Hoeffner, was a man of fine physique, and in excellent health, was continuously employed, and was earning and giving to his said wife, Christina M. Hoeffner, an average weekly wages of fifty-five (\$55.00) Dollars; that said John H. Hoeffner, was, at the time of his death, of the age of 37 years, and that his life's expectancy was 30.35 years; that the libellant has suffered injury by the death of said John H. Hoeffner in the sum of Fourteen Thousand Four Hundred (\$14,400.00) Dollars, as compensatory damages, and by reason of the reckless indifference to the rights and safety of the said John H. Hoeffner by the respondent, as aforesaid, the further sum of One Thousand (\$1,000.00) Dollars, as exemplary or punitive damages.

XI.

CONCLUSIONS OF LAW.

As conclusions of law, from the foregoing findings of fact, I find that the libellant, Christina M. Hoeffner,

as Administratrix of the Estate of John H. Hoeffner, deceased, is entitled to recover from the respondent, National Steamship Company, the sum of Fifteen Thousand Four Hundred (\$15,400.00) Dollars, and I recommend that judgment and decree be given to the libellant, Christina M. Hoeffner, as administratrix of the Estate of John H. Hoeffner, deceased, against the respondent, National Steamship Company, in the sum of Fifteen Thousand Four Hundred, (\$15,400.00). In arriving at the foregoing conclusion, I have carefully considered the authorities cited in the briefs filed by the proctors for the respective parties herein, all of which is respectfully submitted.

Stephen G. Long

United States Commissioner.

(SEAL)

Dated February 26, 1923.

[ENDORSED]: No. 1157 Civil In The DISTRICT COURT of The UNITED STATES IN THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION Christina M. Hoeffner, as Administratrix of the Estate of John H. Hoeffner, Deceased, Libellant, vs National Steamship Company, Respondent. Commissioner's Report FILED FEB 26 1923 CHAS. N. WILLIAMS, Clerk By R. S. Zimmerman MONAHAN & BEUM 212 W. Sixth St. San Pedro, California Phone 1166 J Attorneys for *Respondent*.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION, (IN ADMIRALTY.)

CHRISTINA M. HOEFFNER,)
as Administratrix of the Estate) No. 1157
of John H. Hoeffner, deceased,)
) AFFIDAVIT OF
Libelant,) SERVICE OF
vs) EXCEPTIONS
) TO
) COMMISSION-
NATIONAL STEAMSHIP) ER'S REPORT
COMPANY,) BY MAIL.
Respondent)

STATE OF CALIFORNIA,)
) SS.
COUNTY OF LOS ANGELES,)

Joe Crider, Jr. being first duly sworn deposes and says:

That he is an attorney at law licensed to practice in the State of California; that he resides and has his office in the City of Los Angeles, County of Los Angeles, State of California:

That he is proctor for Respondent in the above entitled action;

That Monahan & Beum, attorneys at law, are attorneys for Libellant in this action and have their offices in the City of San Pedro, County of Los Angeles, at 212 W. 6th St. of said city:

That there is a regular daily communication by mail between said cities;

That on March 10, 1923, affiant deposited a copy of the attached exceptions to Commissioner's Report in the post office at Los Angeles, California, in a sealed envelope with postage prepaid and that said envelope was addressed to Messrs. Monahan & Beum, 212 W. 6th St. San Pedro, California.

Joe Crider, Jr.

Subscribed and sworn
to before me this 10th day
of March, 1923.

I. C. Swain

Notary Public in and for the
County of Los Angeles, State
of California

(SEAL)

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN DI-
VISION. (IN ADMIRALTY.)

--- o ---

CHRISTINA M. HOFFNER,)
as Administratrix of the Estate)
of John H. Hoeffner, deceased.)

Libelant,)

vs

No. 1157.

NATIONAL STEAMSHIP)
COMPANY,)
Respondent.)

--- o ---

Respondent hereby excepts to the Commissioner's report, findings of fact and conclusions of law on file

herein, upon the following grounds, and each of them, to-wit:

I.

That the evidence is insufficient to support the findings of the Commissioner contained in paragraph III of said findings, as follows: "The first mate who had charge of unloading the lumber cargo of that vessel ordered the said John F. Hoeffner to sling up the lumber, and in obedience to said orders it was necessary for him to go on top of the lumber pile, stowed fore and aft 8 or 10 feet high or extended to the full width of that part of the ship and was flush with both sides thereof. The lashings of this lumber pile had previously been removed and the top was a disordered mass of lumber."

II.

That the evidence is insufficient to support finding IV: "That there was no life lines, life rails or other protection out-board of this lumber pile, which, while a vessel was under way in a narrow harbor and being subject to pitch or roll from the wash or propellers of other vessels or to the sudden jar of hitting or being hit by other vessels or obstructions, was a place dangerous to life and limb for those who were required to work thereon."

III.

That the evidence is insufficient to support finding V, that portion reading as follows: "that the Brunswick did not immediately stop when the cry 'man overboard' was raised; that no life boat was lowered, no life preserver, no life buoy was thrown from the

Brunswick to the said John H. Hoeffner after he was precipitated overboard, and while struggling in the water, and that no efficient efforts were made to rescue him by the master, officers and crew of said ship Brunswick, and that the life boats and other life saving appliances of said ship Brunswick were not, at the time that said John H. Hoeffner was precipitated overboard therefrom, reasonably fit and accessible to effect his rescue, and that the master, officers and crew of said ship Brunswick were incompetent, and palpably inefficient in the performance of their duties in matters pertaining to the handling of the ship and in the use of the ship's life saving appliances.

IV.

That the evidence is insufficient to support that portion of finding VI, reading as follows: "That he had no means of ascertaining the condition of the lumber pile, on which he was required to work until he got on top thereof, when he was immediately precipitated overboard. That he had no means of ascertaining the incompetency of the master, officers and crew of said *said* Brunswick in their duties with the condition, accessibility and use of the life saving appliances of said ship Brunswick, and that the danger resulting or that might result from such condition as aforesaid was a latent and not an obvious danger. That said John H. Hoeffner was not guilty of contributory negligence in the performance of his said work on board the said ship Brunswick, and in no wise, while so employed, did he act otherwise than in a careful, cautious and prudent manner under the circumstances."

V.

That the evidence is insufficient to support that portion of finding VII, reading as follows: "That said John H. Hoeffner on the 18th day of April, 1922, and while in the employ of respondent on board of said ship Brunswick, came to his death by drowning in the harbor of San Pedro, California, and that said death was caused by the failure of the respondent to furnish him with a safe and suitable place in which to perform said employment, and that the failure of the respondent to provide and maintain in a reasonably fit and accessible condition proper and efficient life saving appliances on board said ship, Brunswick, and in the failure of the respondent to provide and maintain a master, officers and crew, competent and efficient in the handling of said ship Brunswick and in the stowage, accessibility and use of life saving appliances thereof."

VI.

There not being sufficient evidence to support the foregoing findings, it follows that the conclusions of law that Christina M. Hoeffner, as administratrix of the Estate of John H. Hoeffner, deceased, is entitled to recover from the respondent National Steamship Company, the sum of \$15,400.00, is unwarranted.

VII.

That the said afore-mentioned findings of fact, nor any of them, are material to the issues as raised in the pleadings on file herein.

VIII.

That the Commissioners findings of fact and conclusions of law do not take into account the fact that the accident was inevitable and unavoidable.

IX.

That the Commissioners findings of fact and conclusions of law do not take into consideration and ignore the fact that deceased was guilty of contributory negligence, contributing directly and proximately to the accident and his death.

X.

That this Honorable Court does not have jurisdiction over the subject matter of this action or the parties thereto.

XI.

That there is insufficient evidence, and, in fact, no evidence whatever, to support the finding that punitive or exemplary damages should be assessed against respondent.

These exceptions are based on the libel, plaintiff's answer, the entire files in the case, the transcript of testimony and excerpts from said transcript attached hereto and upon these exceptions.

Joe Crider, Jr.

Protector for Respondent

AUTHORITIES:

20 Ruling Case Law Sec. 12, Page 17

20 Ruling Case Law Sec. 14, Page 19

Flynn vs S.F. & J.R.R. 40 Cal. 14 at Page 19

Shearman & Redfield on the Law of Negligence

6th Edition Volume I, Sections 15 and 16, also

Section 57, Page 122.

MEMORANDAM ACCOMPANYING EXCEPTIONS TO COMMISSIONER'S REPORT

THE LUMBER WAS NOT IN A DISORDERED MASS.

“A No, sir. The lashing was still on the lumber at the San Pedro Lumber Company's yard, most of it, I think there was two at the forward end of the dock that was taken off, right at this dock, San Pedro yard.

Q As a matter of fact, part of the cargo, the lumber cargo was unlashed?

A The biggest part of the deckload was lashed, on leaving San Pedro Lumber Company yard [Tr p3, 1s 22-26; p4, 1s 1-3]

Q This man was on a sling on top of this lumber?

A Yes, he was building up a sling, him and his partner.

Q Did you see him working on this lumber?

A Yes, I saw him working on that lumber.

Q Who fixed the sling for him, who arranged his sling load of lumber?

A Two of them was working there, two men was working putting the sling around.

Q And he was one of the two?

A Yes, he was one of the two men. [Tr p51 1s 20-26; p52 1s 1-3]

A His partner, the man working with the deceased, he had the sling after they piled this load and put it underneath, and the man, in order to get this load, he had to go on top of this load.

Q You mean Mr. Hoeffner got on top?

A Yes, on top here.

“Q And threw the sling there?”

A Yes. The top plank of it was laying in a shape like this. It wasn't exactly straight with the others, consequently when he stepped on it, it tipped.

Q It tipped?

A Yes. The first time I noticed it it was shaking when he stepped on it the first time. The second time it over-balanced. He had the sling and was trying to take it towards the middle of the load.

Q He had this string pulling towards the middle of the load?

A Yes. And it tipped, he overbalanced while holding onto the thing, and him dragging that sling underneath till he came to where the big hook is.” [Tr. p86 1s 19-26; p87, 1s 1-12.]

“I went forward, and I got a sling, to the poop deck. There was some slings on the poop deck, that is, at the end of the lumber where the winchdriver and a man,— I forget whether the mast stands fore or aft— yes, it stands forward, the mast, I am pretty sure. And I unloosened one of these slings and took it down and stuck it under the lumber pile, the load we had already prepared. That is, it was prepared. We didn't prepare the loads. The loads were all prepared. That was laying on the top of the deck. I shoved the sling under and where the splice connects on the string, there was threads on that splice which was hard to get through; so he leans over the load and pulls it with his hand, and he gets it pretty near through. I said, ‘We will pull the sling back to get it in the center of our

load.' Well, in doing so, he couldn't get it back. So he stood on top of his load, "exactly like that (illustrating), and he reached down to get hold of the sling and give a pull, and the board he was standing on turned, and he slipped right off back, that is, facing the ship with his back towards the water. At that time the winch-man, he hollered, 'Man overboard!'" [Tr. p104, 1s 11-26; p105, 1s 1-5,]

THE BOAT WAS STOPPED IMMEDIATELY.

"Q What did you do when you heard the cry 'Man overboard'?

A I stopped the boat immediately.

Q You stopped it?

A Yes, sir.

Q That is, you just stopped, rung the engine room alarm to stop the engine?

A Yes, sir." [tr p10, 1s 9-15]

"Q Your machinery responded all right, did it, when you gave the orders?

A Yes, sir.

Q And all of the appliances were used in stopping the boat that possibly could have been used?

A Yes, sir." [Tr p20 1s 12-17]

"Q Did the boat stop immediately then?

A Yes; he stopped the boat.

Q In your experience as a sailor, based on this experience that you have testified to that you have had, is it possible to stop a boat immediately— I mean without it moving forward at all, after an order is given?

A No. If the boat has headway, making headway,

if you stop, especially if the vessel is loaded, see, she wouldn't stop right away.

Q If you slam on everything you have got, it won't stop immediately, will it?

A No.

MR. CRIDER: I think that is all." [Tr p 58 1s 5-17.]

"Q From your experience as chief engineer of that boat would you say, with your knowledge of its equipment and its engine, would you say it was stopped and backed as quickly as it could have been?

A Yes, sir." [Tr. p144, 1s 12-16]

THE CREW IMMEDIATELY STARTED TO LAUNCH A LIFE BOAT, BUT BEFORE IT COULD BE LAUNCHED TWO LAUNCHES, EQUIPPED WITH ENGINES AND A ROW BOAT, REACHED THE SCENE WHERE THE DROWNING MAN SANK.

"A Before I had a chance to turn the Brunswick around or to do anything of the kind to rescue the man there was a boat and two launches at the man already and when I got the head on the Brunswick, getting ready to get the boat ready to go to the man the man was already drowned." [Tr. p12, 1s 2-6]

"Q And you say that they were lowering a life boat, started to lower—

A They started to get one ready to lower.

Q Were there any other buoys thrown from any other boat or vessel to this man other than the one that was thrown from your vessel?

A The pilot boat coming up the bay, the man in charge of the pilot boat, he threw a buoy on top of the man.

Q Where did that buoy that the man from the pilot boat threw, strike, with reference to the man who was in the water?

A He threw it as near as he could possibly get.

Q And you say it lit on top of him?

A Just about, the man was at the time, when he seen it, the man was ready to sink, and he threwed this life ring as close to him as he could.

Q It struck on top of the man?

A Almost, as near as I could see. I was watching.

Q What you are talking about now, this life buoy the pilot man threw that struck on top of him, you saw that with your "own eyes, did you?

A Yes, sir." [Tr. p19 1s 16-26; p20, 1s 1-11]

Q "A Well, I throwed that life preserver as quick as I got up there.

Q After that, that was when the vessel stopped, was it?

A They were getting the boat ready but I didn't go to the boats because I was attending to the life preserver." [Tr p35, 1s 17-22.]

Q "A That was all I know— what happened. I had a life *preserved* and they were getting the life boats ready to go after this fellow and then there were two launches, one launch and that boat from the dredger. Then we sung out for them to get to this fellow. I was singing out like anything myself to draw attention of those fellows to come to this drowning fellow, and

this pilot boat, what they call it, I know it was a white painted boat, that was coming up the river and he got close to this man what got drowned and I don't know if he reached him. I didn't see him throw a life preserver but I think the man in the launch reached for the drowning man and he got his hat. [Tr. p36, 1s 1-12]

“Q When you saw him go down how many boats were there up around there, the immediate place where he went down?

A There was three boats.

Q What size were those boats?

A Well, there was one skiff there pulled by hand and two gasoline launches. [Tr. p53, 1s 21-26]

“Q Did you see any other boat or boats around the point where this man sank?” [Tr p88, 1s 25-26]

“A I did.

Q How many were there?

A There was one launch going along the pipe line towards the northern end. I was whistling to them and shouting and they didn't hear me. And there was a pilot launch, a white-painted launch, and a skiff.

Q Did those *launches* or boats come up to the place where the man sank?

A The pilot boat came first. The rest of them came later on.

Q Did you see any life buoys or lines thrown from any of those boats?

A One was thrown from the pilot boat.

Q You heard the cry ‘Man overboard!’ or you gave—

A I gave it myself.

Q What happened to your boat immediately after that cry? Did it stop or slacken speed?

A Yes—" [Tr p89, 1s 1-18]

"Q BY MR CRIDER : How long have you followed the sea?

A 25 years.

Q Have you seen life boats of the kind that were on the Brunswick, lowered?

A Yes, sir.

Q And you know how they were equipped at that time?

A Yes, sir.

Q Equipped as those life boats were, would it be possible to lower one of them instantly?

A No, sir.

Q They had been tied up there for some time, hadn't they?

A Well, we use that boat most every time in the Mendocina dock at Fort Bragg to get the lines out with.

"Q How long a time would it have taken to have lowered the life boat, that is, to detach it and everything and lower it?

MR. MONAHAN: Objected to as incompetent, irrelevant and immaterial.

THE COMMISSIONER: Objection overruled.

A I should say a minute or two minutes, anyway. May be three." [Tr p143, 1s 5-26]

Q By that time the other boats were up there?

A That depends on where your men is at the time you want to lower them.

Q Of course, the men have to get up there?

A Yes, from their work.

Q In that period of time the other boats had drawn up?

A Yes." [Tr. p144, 1s 1-7]

"BY THE COMMISSIONER; What did they do towards lowering the boat?

A Took the lines loose that was holding her on the inboard side and where the lines are wrapped around the davits, got them loose and everything ready to hoist her up and throw her over.

Q But they didn't hoist her up?

A No, sir.

Q They didn't throw her out beyond the lines?

A No, sir.

Q They didn't raise her up at all?

A I don't think they did. I wouldn't say as to that, but they didn't move her out if they did.

Q How many men did you have working on the life boat at the time? Did you have all the men that were necessary to lower it?

Q BY THE COMMISSIONER: Then, when they saw there were three boats attempting to save the man, then the crew of the Brunswick did nothing further—and they stopped?

A Stopped and waited, yes, sir." [Tr. p148, 1s 2-26]

Q These other boats you saw come in rushing up there were manned by—

A —gasoline.

MR. MONAHAN: Not all.

Q Two of them were.

A Commonly called motorboats or gasoline boats.

Q And this man had sunk for the last time before they finished with their work they had started at lowering the life boats?

A Yes, sir, just about that time. When the man reached for him it was no use, because the boat was there." [Tr p150, 1s 1-9]

"A I know they were there to try to get the boat over. I know one man was there and the second mate. I see them, But who else was there at the time I can't state particularly. I know there were some more men there." [Tr. p159, 1s 3-8]

"Q You were working at the life boat, were you, there?

A Yes, sir.

Q Getting it ready to swing it overboard?

A Yes, getting it ready, getting the covers off, loosening up the covers.

Q What did you do to get that ready?

A I had to clear the halyards, the halyards are generally inside the boat and the cover on the life boat—see? And then we had to get, there is a fore and aft strong-back to "keep the cover in position. And I was working at that and the motor boats started to pull over towards the man so the boat would be there before we got our boat over." [Tr p163, 1s 6-19]

THE BRUNSWICK WAS EQUIPPED WITH LIFE BUOYS AND LIFE BOATS, AND ONE OF THE CREW IMMEDIATELY THREW A LIFE BUOY TO THE DROWNING MAN.

“Q BY MR. MONAHAN: Did you have any life buoys aboard?

A Yes, sir.

Q How were they rigged? What kind of life buoys did you have?

A Regulation life buoys.” [Tr. p13-1s 13-17]

“Q How are they attached? Where were they attached to the side of the vessel?

A They are stuck in a canvas bracket, stuck right in a position so the man, all he can do is grab hold of the life buoy pull it and throw it overboard.” [Tr. p14, 1s 4-8]

“Q Now, Captain, how many of these buoys did your vessel have on it on this date?

A Life buoys?

Q Yes.

A We had four.

Q Four of them. And how many life boats such as you have described? [Tr. p1-, 1s 8-15]

A Two.”

“A Yes. I jumped on the house where the life boats were and four life buoys on the stern of the ship—

Q On the deckhouse?

A Yes, right hanging over the stern of the ship—

Q Hanging over the top rail?

A In a rack.

Q Rack?

“A Canvas— Call them ‘suspenders’ same as you put suspenders on. They were stuck in that.

Q You mean a strap?

A Strap, yes. And I got up there and one long-shoreman says, ‘Its a time to take this life preserver out,’ but instead of lifting it out, he was pulling it this way, against the rail, and he couldn’t get it out that way so I just got hold of this life preserver and threw it overboard. [Tr. p31, 13-26; p32, 1s 1-2]

“Q What life boat did you decide upon launching?

A The port life boat.

Q Did you have a life boat on the starboard side?

A Yes, sir.” [Tr. p44, 1s 22-25]

“Q BY MR. MONAHAN: What kind of life boats did the Brunswick carry?

A Two wooden life boats.

Q Can you describe those life boats?

A Well, they are 20 feet long and about, I don’t know, about 6—

Q 20 feet long. Can you give any further description of those life boats?

A Yes. 4 or 5 foot beam on them.

Q Beyond the dimensions can you give any further description of them so that if I went down I would know what class of boat to look for?

A The customary equipment, all equipment with air tanks.

Q Did you have a compass on the life boat?

A Yes.” [Tr. p50, 1s 4-19.]

“Q I believe you say you saw one of the life preservers on the deck, did you?”

A On the deck when I stepped out, when I came aft.

Q That life preserver was out of its sling, was it?

A Yes.” [Tr. p54, 1s 13-17]

“Q It wasn’t in this sling or suspenders?”

A No.

Q Was it laying on the deck?

A Yes.

Q What was its condition with regard to being wet or dry?

A It was wet.” [Tr. p55, 1s 1-6]

“Q Did you see the man in the pilot boat throw the life preserver?”

A Yes.” [Tr. p91, 1s 24-26]

“Q Did you see any one throw a life buoy from the Brunswick?”

A Yes. Charlie, a sailor, came by and a man was trying to get one out and Charlie came up and pulled it out and throwed it overboard.

Q What is that?” [Tr. p139, 1s 19-25]

“Q How many life buoys were there on the boat?”
A Four astern.

Q How many life boats?

A Two. [Tr. p143, 1s 2-5]

THE CREW WAS THOROUGHLY EXPERIENCED AND EXCEEDINGLY EFFICIENT. ALL OF THE CREW HAD HAD MANY YEAR'S EXPERIENCE AT SEA.

“MR. MONAHAN: I am finished with the witness. You can have him. Excuse me, a minute. Captain, how long have you been at sea?

A About 32 years.

Q And on what class of vessels have you served previous to going on the Brunswick?

A Different classes of vessels, sailing and steam.

Q Sailing vessels, too?

A Yes.

Q What sailing vessels?

A Square rigged, fore and aft rigged vessels and steamers of different types and sizes.

Q How long ago since you served on square rigged vessels?

A I came out to San Francisco in a barkentine in 1898, the last square rigged vessel I been in.” [Tr. p15, 1s 22-26; p16, 1s 1-11].

“Q BY MR. MONAHAN: What do you understand about navigation, Captain? Are you a practical navigator?

A I passed an examination to that effect.

Q I am glad you told me that. When did you pass this examination for master?

A About 12 years ago.

Q For what class of vessel have you got a master's certificate?

A I got a master's certificate for a steamer on any

ocean, an unlimited master's license." [Tr. p18, 1s 19-26; Tr. p19, 1s 1-2]

"Q Now, Captain, you have followed the sea continuously for how long, did you say?

A 32 years.

Q About 32 years. Now, with reference to the sailors that were on the Brunswick at this time, were they experienced sailors, if you know?

A Yes, sir.

Q Had you ever found any one of them to be incompetent?

A No, sir.

Q They had always performed their duties properly?

A Yes, sir.

Q You were familiar with your men, were you?

A Yes, sir." [Tr. p23, 1s 15-26]

"Q How long have you been going to sea?

A I have been going to sea since I was 13 years old.

Q On what classes of vessels have you been going to sea on?

A Steamers and sailing vessels, square riggers.

Q Square rigged vessels?

A Yes.

Q How old are you?

A 42 years old.

Q And you have been going to sea since you were 13 on square rigged vessels and on steamers?

A Yes." [Tr. p33, 1s 2-13]

"How long have you been going to sea?

A 25 years.

Q On what class of vessels?

A Sailing and steam." [Tr. p47, 1s 10-13]

"A I have been going to sea since 1902.

Q In the capacity of winchman?

A No. I was A. B." [Tr. p 82, 1s 7-9]

TO THE GRAVAMAN OF THE ACTION IN THIS CASE IS THAT THE BRUNSWICK WAS NOT EQUIPPED WITH LIFE BUOYS, LIFE LINES OR LIFE BOATS, AS REQUIRED BY LAW. AS A MATTER OF FACT, AT THE TRIAL OF THE CASE, PROCTOR FOR LIBELANT STIPULATED THAT THE BOAT WAS EQUIPPED WITH RAILS, LINES, LIFE BOATS AND LIFE BUOYS AS REQUIRED BY LAW.

"MR. CRIDER: As I understand it, Mr. Monahan is willing to stipulate that the United States inspectors made an inspection of this boat before the accident happened— it has been testified that that was in December, before this accident happened— and at that time the boat Brunswick was equipped with all necessary appliances, life buoys, life boats, guards, rails, lines, and so forth, as required by law and by the regulations in the Statutes of the United States. I understand you are willing to stipulate to that, Mr. *Monhana*?

MR. MONAHAN: Yes, I am willing to stipulate that at the last time she was inspected by the local inspectors, if she wasn't fully equipped, they would, in the performance of their duties, compel her to be so equipped; and we will assume that she was fully equipped at that time.

MR. CRIDER: Then your stipulation means that at that time she was equipped as required by law?

MR. MONAHAN: Yes; at the last inspection, whatever time that was. Well, I didn't say life rails. The local inspectors haven't anything to do with those. You can build a ship in any manner that you like.

MR. CRIDER: All right, then. Your stipulation covers life buoys, life boats—

MR. MONAHAN: And other equipment required by statute.

MR. CRIDER: Referring to the time immediately after the "accident, a day or so after the accident, an inquiry was held, and that it was so equipped at that time.

MR. MONAHAN: No. On mature deliberation, I cannot stipulate to that for this reason; the local inspectors have no authority to do anything beyond—or are you speaking about the equipment of the vessel at that time?

MR. CRIDER: Yes.

MR. MONAHAN: Yes. I will stipulate also the local inspectors found her fully equipped at some kind of an inspection they had after the subject-matter of this libel arose.

THE COMMISSIONER: Can you fix a date at which that inspection was made?

MR. MONAHAN: Sometime shortly after April 18 last.

MR. CRIDER: Within a day or so after, Mr. Monahan?

MR. MONAHAN: Yes. That she was fully equipped?

MR. CRIDER: Yes. I would also like to offer the findings of the United States local inspectors, that is, the findings giving the result of their investigation of this accident, which I have here.

MR. MONAHAN: I object to that on the ground the local inspectors have no judicial authority to inquire into anything beyond the equipment of the ship as provided for by statute, and that, it having been conceded the vessel was fully equipped, the subject-matter of their inquiry is entirely irrelevant and immaterial, and has no bearing on the issues here.

THE COMMISSIONER: I will sustain the objection as not being the best evidence. However, it may go into the record for the purpose of preserving the record on review.

MR. CRIDER: Your Honor, may I ask that the Reporter copy this, and let the gentleman have it back?

THE COMMISSIONER: It may be copied in the record.

MR. CRIDER: Mr. Reporter, will you copy this, please?

“(The following is the matter so requested to be copied:)

TRIPPLICATE

File No. 981

S. I. G. No.

Report of Casualties and Violation of Steamboat Laws.

Name of Vessel

Brunswick-Freight steamer

Name of Officer

John E. Wahlgren, Master.

Local District

Los Angeles, Cal.

Date of Report	May 8, 1922.
Date of Casualty or Violation.	April 18, 1922.
Nature of Casualty or Violation.	Accidental drowning.
Action Taken	Case investigated and dismissed.
Number of lives lost	One
Form	924-A
Department of Commerce.	
Steamboat-Inspection Service.	11-45-77

REMARKS:

While vessel was proceeding from dock at San Pedro to dock at East San Pedro about 8:05 a. m., John Hoeffner, an American, 38 years of age, married, who boarded the vessel to work as a longshoreman, accidentally fell overboard while engaged in pulling a sling around a load of lumber being prepared for discharging upon arrival at dock. Vessel was immediately stopped and crew made ready to launch lifeboat but was not considered necessary as two launches and a skiff, being in the vicinity, went to his assistance. A life buoy was thrown to him from one of the launches, which he did not grasp, and, being unable to swim, he disappeared before assistance could be given further.

The body was found some eight days later, and coroner's jury brought in a verdict of accidental drowning. Case was investigated on April 20 and May 6, 1922, on which latter date testimony was taken from those connected with the vessel which just arrived in port.

No blame was attached to any of the licensed officers of the vessel for the mishap, and the case was, therefore, dismissed.

(Signed) S. A. Kennedy, Jr.

Carl Lehnert.

United States Local Inspectors."

[Tr. pages 170, 171, 172, down to and including line 19 on page 173.]

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[ENDORSED]: 1157 Civ IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. (IN ADMIRALTY.)

CHRISTINA M. HOEFFNER, as Administratrix of the Estate of John H. Hoeffner, deceased, Libellant, vs NATIONAL STEAMSHIP COMPANY Respondent EXCEPTIONS TO COMMISSIONER'S REPORT, FINDINGS OF FACT AND CONCLUSIONS OF LAW.

FILED MAR 10 1923 CHAS. N. WILLIAMS, Clerk
By L. J. Cordes, Deputy Clerk

JOE CRIDER, JR. Attorney-at-Law 333 H. W. Hellman Building Cor. 4th & Spring Sts. LOS ANGELES, CALIFORNIA Phone 61261

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

CHRISTINA M. HOFFNER,)	No. 1157
as Administratrix of the Estate)	
of John H. Hoeffner, deceased,)	
Libelant,)	AFFIDAVIT OF
-vs-)	SERVICE OF
NATIONAL STEAMSHIP)	PETITION
COMPANY,)	BY MAIL
Respondent.)	

.....

STATE OF CALIFORNIA,)	
)	SS.
County of Los Angeles,)	

Joe Crider, Jr. being first duly sworn, deposes and says:

That he is an attorney at law licensed to practice in the State of California; that he resides and has his office in the City of Los Angeles, County of Los Angeles, State of California; that he is attorney for Respondent in the above entitled action.

That Monahan & Beum, attorneys at law, are attorneys of record for Libelant in this action and have their offices in the City of San Pedro, County of Los Angeles, at 212 - 6th St. San Pedro, Cal;

That there is a regular daily communication by mail between said cities;

That on March 12th, 1923, affiant deposited a copy of the attached petition in the post office at Los Angeles, California, in a sealed envelope with postage prepaid and that said envelope was addressed to Messrs.

Monahan & Beum, attorneys at Law, 212-6th Street, San Pedro, California.

Joe Crider, Jr.

Subscribed and sworn to before me this 12th day of March, 1923.

Clarence B. Runkle
Notary Public in and for the
County of Los Angeles, State of
California

(SEAL)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

(Before Hon. S. G. Long, U. S. Commissioner.)

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate)	No. 1157
of John H. Hoeffner, Deceased.)	
Libelant,)	PETITION FOR
-vs-)	REHEARING
NATIONAL STEAMSHIP)	AND RE-
COMPANY,)	REFERENCE.
Respondent,)	

.....

Comes now the respondent in the above entitled action and petitions this Honorable Court to grant a rehearing and re-reference for the purpose of taking further testimony.

This petition is based on Respondent's exceptions to the Commissioner's report filed herein by respondent

and will be based on affidavits of newly discovered witnesses, who were not available to respondent at the time testimony was taken before the Commissioner herein.

Dated March 12, 1923.

Respectfully submitted,

Joe Crider, Jr.

Proctor for Respondent

[ENDORSED]: No. 1157 IN THE DISTRICT COURT OF THE STATE OF CALIFORNIA SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION Christina M. Hoeffner, etc Libelant, -vs- National Steamship Co., Respondent PETITION FOR REHEARING AND REREFERENCE. FILED MAR 12 1923 CHAS. N. WILLIAMS, Clerk By W. J. Tufts, Deputy Clerk JOE CRIDER, JR Attorney-at-Law 333 H. W. Hellman Building, Cor. 4th & Spring Sts. Los Angeles, California Phone 61261 Attorney for respondent

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA SOUTHERN DIVI-
SION, (IN ADMIRALTY).

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate)	
of John H. Hoeffner, deceased,)	No. 1157,
Libelant,)	AFFIDAVIT OF
vs.)	MAILING.
NATIONAL STEAMSHIP)	
COMPANY,)	
Respondent,)	

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

JOE CRIDER, JR., being first duly sworn, deposes and says that he is an attorney at law licensed to practice in the State of California, that he resides and has his offices in the City of Los Angeles, County of Los Angeles, State of California, and he is proctor for the respondent in the above entitled action; that John J. *Moynihan*, attorney at law, is proctor of record for Libelant in the above entitled action and has his offices in the City of San Pedro, California, at 212 West 6th Street; that there is a regular daily communication by mail between said cities; that on March 28th, 1923, affiant deposited a copy of the attached amendment and addition to exceptance to Commissioner's report, findings of fact and conclusions of law, in the Post Office at Los Angeles, California, in a sealed envelope with postage prepaid and that said envelope was addressed

to John J. Monahan, Esq., Attorney at Law, 212 West 6th Street, San Pedro, California.

Joe Crider, Jr.

Subscribed and sworn to before me this 28th day of March, 1923.

Clarence B. Runkle

Notary Public in and for the County of Los Angeles, State of California.

(SEAL)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION, (IN ADMIRALTY).

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate	)	No. 1157, Amend-
of John H. Hoeffner, deceased,	)	ment and Addi-
Libelant,	)	tion to Exceptions
vs.	)	to Commissioner's
NATIONAL STEAMSHIP	)	Report, Findings
COMPANY,	)	of Fact and Con-
Respondent.	)	clusions of Law.

Respondent hereby files the following addition and amendment to its exceptions to Commissioner's Report, findings of fact and conclusions of law hereinbefore filed and in addition to said exceptions excepts to said report findings of fact and conclusions of law on the following grounds and each of them:

I.

That the findings of fact made by the Commissioner herein do not support the conclusions of law of said Commissioner and especially said conclusion as follows:

“First conclusions of law from the foregoing findings of fact I find that the Libelant, Christina M. Hoeffner as administratrix of the Estate of John H. Hoeffner is entitled to recover from the Respondent, National Steamship Company the sum of \$15,400.00.”

II.

That the judgment is excessive. These exceptions are based on the libel, plaintiff's answer, the entire file in the case, the transcript of testimony.

Joe Crider, Jr.

Proctor for Respondent.

Authorities in support of the *foreoing*:

Wagstaff vs. U.S. 281, Federal 877.

Hanrahn vs. Pacific Transport 262, Federal 951.

V. Osceola 189 U.S. 158.

The Pochasset 281, Federal 875.

Chelentis vs. Luckenbach 248, U.S. 372.

Burton vs. Greig, 271 Federal Reporter 271.

Petroline 271, Federal Reporter 273.

73 Federal 883

136 Federal 825

The City of Alexandria 17, Federal 390.

Olson vs. Navigation Co. 104, Fed. 574,

281 Federal 874.

(ENDORSED)

1157 Admiralty IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, SOUTHERN DIVI-
SION (IN ADMIRALTY) CHRISTINA M.

HOEFFNER, as Administratrix of the Estate of John H. Hoeffner, decd. Libellant, -vs- National Steamship Co., Respondent. Amendment to Exceptions to Commissioners Report Findings and Conclusions FILED APR 2 1923 CHAS. N. WILLIAMS, Clerk By L. J. Cordes JOE CRIDER, JR. Attorney-at-Law 333 H. W. Hellman Building, Cor. 4th & Spring Sts. Los Angeles, California Phone 61261

At a stated term, towit: the July, A. D., 1923 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the thirteenth day of November, in the year of our Lord one thousand nine hundred and twenty-three;

Present:

The Honorable Benjamin F. Bledsoe, District Judge.

Christina M. Hoeffner, as Ad-)	
ministratrix of the Estate of)	
JOHN H. HOEFFNER, De-)	
ceased,	)	No. 1157 Civil
	)	Admiralty
Libellant)	
vs.)	
National Steamship Co.)	
Respondent.)	

This cause having been heretofore submitted on exceptions to United States Commissioner's report, it is by the court ordered that Opinion herein be filed, sustaining exceptions to the Commissioner's report and thereby re-referring the matter to the Commissioner

for a new hearing or for such other action as by the parties may be deemed appropriate.

At a stated term of the District Court of the United States, for the Southern District of California, held at the Court Rooms in the Federal Building, in the City of Los Angeles, State of California, on the——day of November, 1923.

Present – Honorable Benjamin F. Bledsoe, District Judge.

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate	)	No. 1157 CIVIL
of JOHN H. HOEFFNER,	)	FINAL DECREE
Deceased,	)	FOR
Libellant,	)	RESPONDENT.
vs)	
NATIONAL STEAMSHIP)	
COMPANY,)	
Respondent.)	

The above entitled matter, having, on the 6th day of November 1922, been referred to United States Commissioner Stephen G. Long, by stipulation of the parties, and in pursuance thereof, under an order of the Court directing him to take testimony, make findings of fact and recommend appropriate conclusions of Law, and Judgment and Decree, and said Commissioner, having heard the testimony adduced by the respective parties hereto, and having had the matter submitted to him for report in conformity with said order of reference, and the said Commissioner, having, on the 26 day of February 1923, made his report in writing, wherein and whereby certain findings of

fact were made, and as conclusions of law having recommended that the libellant recover of the respondent the sum of \$14,400.00 compensatory damages, and \$1,000.00 additional as exemplary damages, and the respondent, having, within the prescribed time filed his exceptions to said report, and the said exceptions having been argued and submitted to the court by the Proctors of the respective parties, and due deliberation having been had, and the Court having, on the 13th day of November, 1923, filed an opinion in words and figures, as follows:

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, IN ADMIRALTY.

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate)	
of John H. Hoeffner, Deceased,)	
Libellant,)	No. 1157 Civil.
vs.)	
NATIONAL STEAMSHIP)	
COMPANY Respondent.)	

John J. Monahan, Esq., of San Pedro, for Libellant,
Joe Crider, Jr., Esq., of Los Angeles, for Respondent,

MEMORANDUM OPINION.

BLEDSON, District Judge:—

This case is before the Court upon exceptions to the Commissioner's Report. The Commissioner, having heard the case under an order of the Court directing him to take testimony, make findings of fact and recommend appropriate conclusions of law, and judg-

ment and decree, has made certain findings and as conclusions of law has recommended that the libellant recover of the respondent the sum of \$14,400.00 compensatory damages and \$1,000.00 additional as exemplary or punitive damages.

I have given the case very careful and earnest consideration and can arrive at no conclusion satisfactory to me other than that the judgment and recommendation of the Commissioner should not be confirmed by the court.

The suit was for a recovery for damages sustained by the libellant because of the death of her husband, referred to herein as the deceased, while engaged as a longshoreman in the unloading of the cargo or a portion thereof, of the schooner "Brunswick". It was alleged in the libel that while deceased was engaged in the performance of his duties and while the ship was proceeding upstream in the harbor at San Pedro, and while the deceased was engaged in making up slings of lumber so as to have them ready when the unloading of the vessel should begin, "the sling yielded a little so that he tripped and fell overboard; that there were no life lines or life rails on the side of said vessel where the deceased was working so that he could be protected; that the said vessel negligently continued on her way after the deceased was precipitated into the water, and she proceeded about five hundred feet upstream before stopping; that no boat was lowered to pick up the deceased and that there were no life buoys thrown and that no efforts were made either by the master or crew of the said vessel, to save the

deceased, and that as a result thereof the deceased came to his death by drowning.”

The Commissioner's findings are not based apparently upon the allegations made in the libel, but proceed upon a different theory, probably a theory developed on the hearing. Seemingly this is not contrary to established principles of admiralty practice. The findings made by the Commissioner are to the effect that after the “Brunswick” case off from the San Pedro Lumber Company's dock, the first mate, having charge of the unloading of the lumber, ordered deceased to sling up the lumber, and in obedience to said orders it was necessary for him to go on top of the lumber pile. “The lashings of this lumber pile had previously been removed and the top was a disordered mass of lumber;” that deceased, in company with his working partner, went on top of the lumber pile, deceased being on the outboard side, it being necessary to start slinging from the outboard side, and that “immediately upon getting to his working position, and trying to pull the slings through on the extreme starboard side of the ship, the said John H. Hoeffner stepped on a plank, which tipped, and then stepping on another plank which tipped too and precipitated him overboard and he was drowned.” That there were no life lines, life rails or other protection outboard of this lumber pile which, while a vessel was under way in a narrow harbor, and being subject to pitch or roll from the wash of propellers of other vessels, or to the sudden jar of hitting or being hit by other vessels or obstructions, was a dangerous place

to life and limb to those who were required to work thereon; that deceased was precipitated overboard a few minutes after the "Brunswick" got under way, the speed of the vessel at that time being about two or three miles per hour; that the vessel did not immediately stop when the cry of "Man overboard" was raised; "that no lifeboat was lowered, no life preserver, life buoy, or piece of lumber was thrown from the "Brunswick" to said John H. Hoeffner, after he was precipitated overboard, and was struggling in the water, and that no efficient efforts were made to rescue him, by the master, officers and crew of the said ship "Brunswick", and that the life boats and other life saving appliances of the said ship "Brunswick" were not, at the time that said John H. Hoeffner was precipitated overboard therefrom, reasonably fit and accessible to effect his rescue, and that the master, officers and crew of said ship "Brunswick" were incompetent and culpably inefficient in the performance of their duties in matters pertaining to the handling of the *ship* and in the use of the ship's life-saving appliances."

It is further found that deceased had been engaged in working as a longshoreman only a few months, that he had no means of ascertaining the condition of the lumber pile on which he was required to work until he got on top thereof, "when he was immediately precipitated overboard." That he had no means of ascertaining the incompetency of the master and crew of the vessel; that the danger confronting him was a latent and not an obvious danger; that he was not

guilty of contributory negligence, but acted in a careful, cautious and prudent manner. It is then further found that the deceased came to his death by drowning in the harbor of San Pedro while in the employ of the respondent on board the "Brunswick", "And that said death was caused by the failure of the respondent to furnish him with a safe and suitable place in which to perform said employment, and by the failure of the respondent to provide and maintain in a reasonably fit and accessible condition, proper and efficient life-saving appliances on board said ship "Brunswick", and in the failure of the respondent to provide and maintain master, officers and crew competent and efficient in the handling of said ship "Brunswick" and in the stowage, accessibility and use of life-saving appliances thereof."

It is obvious from a cursory inspection of these findings that some of them are immaterial in that they have no casual relation to the untimely death of the deceased. With respect to others, a careful study of the evidence impells me to the conclusion that they are unfounded and unjustified insofar as the evidence is concerned. For instance, it is not the fact, obviously, that deceased was precipitated overboard and into the water "immediately upon getting to his working position". The evidence of the partner of the deceased and of the winchman who stood on the top of the deck-load, was to the effect that deceased and his partner had been working in the attempt to get the sling around a sling of lumber for at least several minutes. There is some conflict in the evidence as to whether

or not deceased and his partner actually laid the lumber for the sling upon which he was then working, one testifying one way and another another; but in any event, it is clear that the deceased had been, for some considerable time, that is, at least several minutes, on the top of the deckload before he fell therefrom.

The finding that there were no life lines, life rails or other protection outboard of the deckload of lumber, and that in consequence, because of the liability to pitching and rolling from the wash of the propellers of other vessels, or the sudden jar of hitting or being hit by other vessels or obstructions, the place was a dangerous one, is obviously irrelevant and untimely. There is no suggestion anywhere in the record that any wash was occasioned by any other vessel, and no suggestion anywhere that anything struck or was struck by the vessel on which the deceased was employed.

Counsel for libellant examined the captain and other members of the crew of the "Brunswick" as to certain matters of seamanship, and the like, which were wholly irrelevant to any inquiry pending before the Commissioner. From this examination, counsel himself being an expert seaman, it is sought to deduce the inference that the captain and the members of the crew were inexpert and as found by the Commissioner, "incompetent and culpably inefficient in the performance of their duties." It would make little difference how inexpert and incompetent the master and members of the crew were with respect to seamanship generally, if, at the time of the happening of the accident in

question, they acted with due promptitude and without any negligence on their part with respect to the *matters* and duties then devolving upon them. So, irrespective of the wide range of the examination conducted by counsel, the question really is, Did the master and members of the crew fail in any duty then immediately devolving upon them?

It is the fact that no life lines or life rails or other protection was placed around the top of the deckload of lumber, but I cannot bring myself to believe that such circumstance is sufficient to charge respondent with liability. Deceased was sent to the top of the lumber pile in broad daylight, a little after eight o'clock in the morning. There is no suggestion from any source that he could not see perfectly what was up there, what he was expected to do, and the conditions under which he was called upon to perform the labor involved in the completion of his task. If, going up on the top of the lumber pile in the dark, with no opportunity to see or examine the conditions surrounding him, he had been precipitated overboard, a different question would be presented. I know of no rule of conduct, a violation of which would give rise to a charge of negligence, which says that where a man is called to a task in broad daylight, of the sort here under consideration, a railing must be built around him to protect him from falling off or overboard. The testimony in the case is that such rails were never put around the tops of deckloads of lumber, and there is nothing so inherently dangerous in the position as to suggest the necessity for a line or

rail. At best, the top of the deckload could not have been more than twelve or fifteen feet from the surface of the water; there was no unusual height calculated to disturb one's poise, and it seems clear to me that, conceding the place in which deceased had to work to be at all dangerous, the deceased, in accepting the employment, was called upon to exercise greater care because of the greater risk that was involved. It is not found that if a line or rail or other protection had been under, at, or near the top of the lumber pile, it would have prevented deceased from falling overboard. If one had been built and was reasonably necessary as a matter of duty devolving on the respondent, it would have had to have been lowered as the deckload was lowered in order to be a continuing protection to a worker on the top of the lumber pile. To me the situation is not at all dissimilar from that afforded by an everyday sight, the repairing of something contained beneath a manhole, at the top of which a man is stationed to assist the man below or to ward off travellers and the like. In a moment of inattention to his surroundings, the man thus employed steps into the manhole and is injured. With as great reason as that urged in the case at bar, it could be urged in such an instance, that some rail or protection should have been built around the manhole to protect the man who was watching it from falling into it.

Having full powers of observation, full opportunity to know and appreciate the dangers attendant upon the performance of his duties in the place in which he had to perform them, deceased was under the duty

of exercising a care and protection of himself in keeping with the situation in which he found himself. This he did not do, under the evidence, because from undisputed testimony he stepped, not once, but twice, upon a plank which was a part of the sling load he was trying to arrange, and the plank being placed slantwise across the block supporting the sling load, it turned or twisted, and the second time he stepped upon it, it turned sufficiently to cause him to lose his balance and he fell into the bay. One of the witnesses testifies that he saw deceased step upon this plank twice; that the first time he did so the witness felt that his procedure was unsafe and insecure; that is, he felt that the deceased was not exercising due and proper care, considering the place in which he was engaged. My own conclusion, therefore, from the evidence, is that deceased was precipitated into the water not because of any negligence of the respondent or any of its employees, but because of a want of care on the part of deceased himself, i. e., because of his own contributory negligence.

It is next asserted that no life preserver or piece of lumber or anything was thrown down to the deceased when he was in the water. This may be accepted as true in view of the Commissioner's findings, although there was some evidence to the effect that one of the life-buoys on the ship was actually thrown down into the water. There is no testimony in the case as to the direction or speed with which the water in the channel was moving, if at all. Apparently it must have been moving, because the deceased very rapidly

either swam, that is, "paddled", or drifted beyond the stern of the boat. The evidence to my mind establishes the fact that the captain stopped the vessel with all the celerity he could command, in view of all the circumstances. The vessel was heavily laden apparently, proceeding under power up the channel when the accident occurred. It is obvious it could not be stopped immediately, and an approaching vessel had to be taken into consideration. Counsel for libellant quotes at some length from the Rules of the Road respecting one vessel overtaking another, etc.; but it should be remembered that these rules where the vessels are proceeding normally, and that, obviously, the rules could not apply, at least in an unqualified degree, where one vessel, the one being overtaken, is compelled, because of some exigency arising, to change its normal course of procedure and either stop or turn around or the like. Under such circumstances, obviously, in a narrow channel like that at San Pedro, there was a duty devolving upon the master of the "Brunswick" to exercise care that he should not, in his endeavor to extend succor to the deceased, do that which would bring other lives or other property into danger. It should also be kept in mind that there were upon the water at that time two or three small craft, two of them power boats, and that these small craft, becoming apprised of deceased's fall into the water, were endeavoring to render him assistance. One of them, as a matter of fact, got so close to the deceased before he finally went down, as that those on board the "Brunswick" thought deceased actually

touched the craft—a pilot-boat. The person in charge of the pilot-boat threw a life preserved to the deceased, and those on the “Brunswick” observed, and there seems to be no controversy with respect to that, that this life-preserver landed very close to where the deceased was then being seen in the water. These circumstances,—the facts that others who were able to act more quickly than those upon the “Brunswick” because they possessed lighter and quicker moving craft, and that they were using every effort to render aid to the deceased, and were nearer to him than those upon the “Brunswick” were, should be taken into consideration in determining not only the duty devolving upon the men on the “Brunswick” but also in determining the adequacy of their efforts indulged in at the time.

If the deceased had fallen overboard in a large body of water, with no one in the vicinity save those on the “Brunswick”, it could easily and very properly be claimed that a complete failure on their part to do anything in the way of endeavoring to rescue him would be chargeable as gross and indefensible negligence. However, under the conditions obtaining, with others nearer and better qualified to render assistance, the fact that the crew of the “Brunswick” did not do more than they did is satisfactorily explained.

The only finding in my judgment that is at all suggestive of a right to recover on the part of the libellant, is that in Paragraph Seven of the Commissioner’s Report, to the effect that the death of the deceased was due to the “Failure of the respondent to provide

and maintain, in a reasonably fit and accessible condition, proper and efficient life-saving appliances on board said ship "Brunswick". If it could be said, by fair and reasonable inference, that deceased could have been saved if proper and efficient life saving appliances not on board the "Brunswick" had been there, and had been used with reasonable promptitude and efficiency by the officers and crew thereof, then, of course, there would be strong reason for supporting the conclusions arrived at by the Commissioner. It should be borne in mind, however, that it was stipulated in the case that the equipment required by law was on board the "Brunswick", and that such equipment was there at the time of the inspections by the United States Inspectors both prior to and subsequent to the accident. There is no suggestion from any source of any change in condition at the time of the accident, and it must be inferred, therefore, that all the equipment required by law was upon the Brunswick at the time of the occurrence in question. The captain testifies that the usual and proper life-boats and life-buoys were on board, and in their proper location. I see nothing in the testimony at all to justify a conclusion to the contrary. The reason why the life-boat was not launched is answered by what has been said hereinabove. The mate and those in attendance upon it thought the others on the bay in the lighter craft would be able to reach the deceased and extend to him the aid of which he was then in need. With respect to the life-preservers, it is a question, as above referred to, whether one was thrown into the water or

not. The partner of the deceased, a longshoreman working with him, after deceased's fall into the bay, started to throw a life preserver to him. Obviously under all the testimony, though working upon it, due, perhaps to his excited state, he did not know how to remove it from its apparently appropriate receptacle. Instead of lifting it up, as he should have done, and merely breaking the twine which held it in place, apparently he was attempting to put it down through a fixed rack. This occupied some minutes. Before, however, he had succeeded in releasing the buoy, one of the sailors came running up, and without difficulty took it from its place. He says he threw it into the water as an aid to the deceased. Whether he did or not is a question, in view of the conflict in the evidence. Assuming that the life preserver was of the proper and appropriate sort, and that it could have been removed with reasonable promptitude, the fact that the partner of the deceased was engaged in attempting to remove it very likely deterred some of the sailors from going to it and throwing it overboard. Without doubt, it was thought that the partner of the deceased would do that which he was evidently trying to do, to-wit, throw out a life preserver to the deceased. It becoming apparent that he was not succeeding, one of the sailors went to his assistance with the result indicated above. It does not appear, however, anywhere in the evidence, that if reasonable celerity had been employed after the crew became apprised of the fact that deceased had fallen overboard, a life-buoy could have been thrown to him or in his direction,

which would have had any effect upon his rescue, or would have made it possible for him to avoid drowning. Of course, the proof need not be absolute with respect to this because in the absence of the actual occurrence, it would be impossible to say absolutely what would have resulted. But there is no testimony from which it might reasonably be inferred that if, exercising reasonable care and promptitude, a life preserver had been thrown to the deceased, he would or might have been enabled to take advantage of it and save his life.

The deceased having fallen overboard, due to his own negligence, no recovery should be had as against the respondent unless at least it should be proven to the degree required by the law, that the loss of his life thereafter was due to the neglect, want of care, and culpability of the servants of the respondent. I cannot believe the proof adduced suffices to establish this conclusion, and therefore am constrained to disaffirm the conclusions and recommendations reached by the Commissioner.

The above conclusions seem to be determinative of the matters involved, considering them in keeping with the theory of the case developed, and followed by the commissioner and the parties upon the hearing. If the rule contended for by respondent, as illustrated in *Burton vs. Greig*, 271 Fed. 271. be accepted, then there is still less ground for a decree in favor of libellant upon the facts as actually adduced.

The exceptions to the Commissioner's report are sustained, and the matter is re-referred to the Com-

missioner for a new hearing or for such other action as by the parties may be deemed appropriate. November 13th, 1923.

* * * * *

It is Ordered, Adjudged, and Decreed that the exceptions filed by the respondent to the report of the Commissioner herein be, and the same is hereby in all things sustained.

And it *xx* further appearing that the libellant has failed to take any further action in said matter,

It is now ORDERED, ADJUDGED AND DECREED by the Court that the libel filed in the cause be dismissed with ———— costs.

Done in open Court this 4 day of February, 1924.

Benjamin F. Bledsoe

United States District Judge.

Decree entered and recorded FEB 4 1924

CHAS. N. WILLIAMS, Clerk

By Edmund L. Smith, Deputy Clerk,

(ENDORSED)

No. 1157 Civil IN THE DISTRICT COURT OF THE UNITED STATES IN THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION CHRISTINA M. HOEFFNER, etc Libellant vs NATIONAL STEAMSHIP COMPANY Respondent. FINAL DECREE FOR RESPONDENT. FILED FEB 4 1924 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith, Deputy Clerk JOHN J MONAHAN 212 W. Sixth St. San Pedro, California Phone 1166 J Attorneys for Libellant.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

(Before Hon. Stephen G. Long, U. S. Commissioner.)

CHRISTINA M. HOEFFNER, as)
Administratrix of the Estate of)
John H. Hoeffner, deceased,)
John H. Hoeffner, deceased,) In Admiralty
Libelant,) No. 1157.
vs.)
NATIONAL STEAMSHIP COM-)
PANY,)
Respondent.)

REPORTER'S TRANSCRIPT OF TESTIMONY AND PROCEEDINGS.

APPEARANCES: For the Libelant: John J. Monahan, Esq., for Monahan & Beum;
For the Respondent: Jos. Crider, Jr., Esq.

Los Angeles, California, December 1, 1922.

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LOS ANGELES, CALIFORNIA, DECEMBER
1, 1922. 10 A. M.

THE COMMISSIONER: Hoeffner against the Na-
tional Steamship Company.

MR MONAHAN: The libelant is ready.

MR CRIDER: Ready.

THE COMMISSIONER: Is the usual stipulation
entered into?

MR MONAHAN: Yes. We enter into the usual
stipulation for Commissioner's fee and the Stenog-
rapher's fee. And, further, we would like to stipulate
that either proctor may save exceptions to any action
of the court without specifically mentioning it.

THE COMMISSIONER: I hardly think a stipu-
lation is necessary because the report of the Com-
missioner is subject to exceptions.

(Testimony of John E. Wahlgren.)

MR CRIDER: I understand it is deemed that any objection, unless it is overruled, is excepted to.

MR MONAHAN: Yes, deemed excepted.

MR CRIDER: We may want to take a couple of depositions up north before you finally close this and I would like to have the opportunity to take them.

MR MONAHAN: That will be all right.

THE COMMISSIONER: All right: I would like a statement from each one of you so that I will be familiar with the issues.

(Opening statement by Mr Monahan.)

(Opening statement by Mr. Crider.)

THE COMMISSIONER: Did you file any exceptions to the libel?

MR MONAHAN: There are no exceptions filed.

MR CRIDER: No, simply an answer in denial of the things that are alleged in the libel.

MR MONAHAN: I will call the master of the vessel the first witness.

JOHN E. WAHLGREN,

a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q BY THE COMMISSIONER: What is your name?

A John E. Wahlgren.

DIRECT EXAMINATION

BY MR MONAHAN:

Q Will you state your name, age, residence and occupation?

(Testimony of John E. Wahlgren.)

A Age 45, master mariner.

Q Your residence?

A 2230 Prince Street, Berkeley, California.

Q BY MR CRIDER: Have you got a phone?

A Yes, sir. It is Berkeley 7979-J.

Q BY MR MONAHAN: Were you the master of the lumber schooner, Brunswick, on April 15th last?

MR CRIDER: Was that the 15th or the 19th?

MR MONAHAN: April the 18th.

THE WITNESS: April the 18th, it is.

Q Were you master of the lumber schooner, Brunswick, on April 18th last?

A Yes, sir.

Q Where was the Brunswick at that time?

A In San Pedro harbor.

Q What time did you get in San Pedro harbor?

A About 7 a. m. in the morning.

Q Where did you go then?

A Docked at the San Pedro Lumber Company's yard.

Q What did you discharge at the San Pedro Lumber Company dock?

A We discharged tan bark, belonging to J. C. Hendry.

Q While at the San Pedro Lumber Company's dock was the lumber cargo unlashd?

A No, sir, it wasn't.

Q Eh?

A No, sir. The lashing was still on the lumber at the San Pedro Lumber Company's yard, most of it.

(Testimony of John E. Wahlgren.)

I think there was two at the forward end of the dock that was taken off, right at this dock, San Pedro yard.

Q As a matter of fact, part of the cargo, the lumber cargo was unlashed?

A The biggest part of the deckload was lashed, on leaving San Pedro Lumber Company yard.

Q Was John H. Hoeffner employed on the vessel under your command on the 18th of April last?

A Yes, sir, I presume he was. I didn't know the man at the time. He turned out to be the man.

Q When did you leave the San Pedro Lumber Company dock?

A Just as the 8 o'clock whistle blowed, or a few minutes after.

Q What is the length of the Brunswick below the water line?

A 162.

Q 162 feet. What is her beam?

A 34 beam, I believe.

Q What draught, light forward and light aft?

A She is about 5 feet something forward light, and about 14 feet aft.

Q What is the load line?

A The load line is about 16 feet 6 aft loaded, about 14 feet 9 to 15 feet forward. It all depends, according to the lumber.

Q What is the horsepower of the Brunswick?

A 500 horsepower.

Q 500 horsepower. What is her gross tonnage?

A 532.

(Testimony of John E. Wahlgren.)

Q 532. What is her net tonnage?

A 183.

Q 183?

A Or 283.

Q What kind of propellor have you got on the ship?

A At the present time we have got a—

Q At the present time? All my questions, Captain, will relate to the 18th of April last or just immediately before—

A The 18th day of April I think we had a cast iron wheel.

Q What is the pitch of the propellor blades?

A That is something I haven't very much knowledge about.

Q What kind of steering apparatus did you have on the vessel?

A Just an ordinary hand steering gear.

Q With a tiller or quadrant?

A There is a quadrant on it.

Q Were your wheel ropes crossed?

A I don't understand.

Q If you don't understand, all right. My question is, "Were the wheel ropes crossed?"

A The wheel ropes?

Q Yes.

A No. The wheel ropes is always in the same working order, condition—

Q I say were they crossed or straight? If you don't know, say you don't know.

MR CRIDER: The witness is entitled to know what the question is.

(Testimony of John E. Wahlgren.)

THE COMMISSIONER: Maybe he doesn't understand.

MR MONAHAN: I asked the question three times, were the wheel ropes crossed?

MR CRIDER: Maybe you can amplify your question a little more.

Q BY MR MONAHAN: Suppose you desire your vessel to go to starboard, what order would you give the helmsman?

A If I told him to put the wheel starboard?

Q What order would you give him?

A You mean if I want the vessel to go to starboard?

Q Yes; what order would you give him?

A I would tell him to put the wheel to port. That would throw the vessel to starboard.

Q What is that again?

A I don't understand you.

Q Suppose you desire to have the vessel go to starboard, what order would you give to the helmsman? Repeat the order.

A You want the vessel to swing to starboard?

Q To proceed to starboard—what order would you give him?

A You mean the vessel swinging to starboard—you would have to port your wheel to get the vessel to swing to starboard.

Q You would have to port your wheel to get your vessel to starboard?

A Yes, sir.

(Testimony of John E. Wahlgren.)

THE COMMISSIONER: Does that answer the question?

MR MONAHAN: That is very satisfactory to me, your Honor; very satisfactory.

Q What kind of life boat do you carry on the vessel?

A Wooden life boats.

Q Can you describe these boats any better than that?

A Not any better.

Q Were they Clinker or Carvel?

A I guess that is what—they are not Clinker.

Q Which were they?

A I presume Carvel, whatever you call it.

Q Have you got any other description or means of describing these vessels besides just “wooden boats”?

A No, sir.

Q Where they whale boats or square stern?

A Square stern.

Q Eh?

A Square stern.

Q Where did you carry, on the 18th of April last, where did you carry this life boat?

A Always in the same place where they are supposed to be carried.

Q And what is the same place? In a nest, cradle or on the davits—

A They are landed in chocks, what we call boat chocks, to keep from rolling over, and the davits, of

(Testimony of John E. Wahlgren.)

course, on each end of the boat with the tackle ready to be hoisted up.

Q You have secure gears, then, haven't you, turn-buckle secure gears to keep them from rolling?

A Just on the inside of the boat there is—

Q Haven't you got any turnbuckles? What keeps them from rolling inboard?

MR CRIDER: This seems to be immaterial.

THE COMMISSIONER: Overruled.

Q BY MR MONAHAN: What kind of boat ropes did you use?

A Manila rope.

Q What size manila?

A Three inch.

Q What is the length of the boat?

A I couldn't state. 20 feet something. They are up to the regulations of the United States Inspectors—

Q I am not asking you about the inspectors. What method did you use for getting the lifeboats out in case of emergency?

A Oh, he had the lashings to hoist the boat up and swing the davits out.

Q Swing the davits outward?

A Yes, sir.

Q What kind of blocks did you have, roller blocks?

A Wooden blocks.

Q I know, but what kind of hooks, just straight bill hooks or did you have a patent hook?

A On one side is a patent hook and on the other side it is a straight hook.

(Testimony of John E. Wahlgren.)

Q How long would it take from the time an emergency signal was given, an emergency alarm given, how long would it take to get the lifeboats in the water?

A Well, it all depends where the men would be at the time.

Q Now, you didn't see Mr. Hoeffner fall overboard, did you?

A No, sir.

Q When did you first learn that Mr. Hoeffner fell overboard?

A Somebody forward, there was somebody hollered there was a man overboard.

Q Who was that that raised the cry "Man overboard", do you remember?

A I don't remember. I think this gentleman sitting over there.

Q Which gentleman?

A There (indicating).

Q Where was he standing at the time?

MR CRIDER: What is that man's name?

A VOICE: Nagel.

Q Is this man you have reference to a member of the crew or a longshoreman?

A This man represents one of the crew.

Q He is a member of the crew?

A Yes, sir.

Q Or represents the crew, which?

A He is a member of the crew.

Q What did you do when you heard the cry "Man overboard"?

(Testimony of John E. Wahlgren.)

A I stopped the boat immediately.

Q You stopped it?

A Yes, sir.

Q That is, you stopped, rung the engine room alarm to stop the engine?

A Yes, sir.

Q Then what did you do?

A What did I do?

Q Yes.

A The first thing I done, I starboard the helm a little bit so the vessel would swing over so I could back the vessel because if I hadn't done so I would run her into a pipe line so I would have damaged the pipe line, and also a big steamer proceeding out at the time, I would have blocked the channel and it would be a case of collision. So the minute I seen I could back the vessel enough to stop headway on her I done so.

Q You just rung the engine room alarm, the indicator, to stop the ship, and put your helm to starboard?

A Yes.

Q Did she respond to your helm movement?

A Yes.

Q And she swung around to port?

A Yes, sir.

Q Swung around to port, over to the Kerckhoff Lumber dock?

A Yes, sir.

Q Then what did you do?

A I backed her full speed.

(Testimony of John E. Wahlgren.)

Q Backed her full speed?

A Yes.

Q Did she respond to the engine at that time? In other words, did she gather starboard?

A Not right away. It takes some time before a vessel will—

Q What speed were you making at the time the man fell overboard?

A Not very much speed. Just going slow.

Q Approximately how many knots were you going?

A I don't know. I couldn't state that.

Q Going a slow speed, though?

A Yes.

Q And how close to the deceased did you get with your ship in attempting to rescue him?

A Before I had a chance to turn the Brunswick around or to do anything of the kind to rescue the man there was a boat and two launches at the man already and when I got the head on the Brunswick, getting ready to get the boat ready to go to the man the man was already drowned.

Q Did you see the dolphin I had reference to in my opening statement, the dolphin to which the dredge was moored?

MR CRIDER: That assumes a fact not in evidence.

MR. MONAHAN: I asked him if he saw the dolphin.

MR CRIDER: It assumes there was one there. You simply stated that in your opening statement. I

(Testimony of John E. Wahlgren.)

haven't any objection to the question if it is properly framed.

Q Did you see the dredge and her scows?

A The dredge was in the channel working at the time.

Q What was the dredge moored to?

A Well now, that's easy to see what cable is out and see what mud pails is there but dredging—

Q Didn't she have a dolphin some distance north of her to which she was tied?

A No, sir. That dredger is moving back and forth all the time.

Q Did she have a dolphin to which she was tied and this dolphin was some distance north of the dredge?

MR CRIDER: If you know.

A Not that I remember.

Q Now, when you stopped, were you nearly abreast of the place you turn around for the Blinn Lumber Company, to come around to the Blinn Lumber yard?

A Not quite. About the middle of Kerckhoff's yard when I stopped the vessel.

Q Did you lower a lifeboat to rescue the man or have one lowered?

A No, sir. We were making one ready to lower.

MR CRIDER: What was that last?

THE REPORTER: (Reading) We were making one ready to lower.

Q BY MR MONAHAN: Did you have any life buoys aboard?

(Testimony of John E. Wahlgren.)

A Yes, sir.

Q How were they rigged? What kind of life buoys did you have?

A Regulation life buoys.

Q I want a better answer than that—regulation life buoys!

MR CRIDER: I presume, in seamen's terms, with which you are so familiar that means—

MR MONAHAN: I want to help you and help the court. There are several regulation kinds. There is the ring—

THE WITNESS: It is cork life rings, canvas outside.

Q What kind of line did you have attached to this ring?

A We have about a nine-thread manila, either nine or twelve, I couldn't state.

Q Nine or twelve-thread manila?

A Fifteen fathoms.

Q How are they attached? Where were they attached to the side of the vessel?

A They are stuck in a canvas bracket, stuck right in a position so the man, all he can do is grab hold of the life buoy, pull it and throw it overboard.

Q How were they attached on the 18th of April last?

MR CRIDER: I understood, Mr. Monahan, that all your questions referred to the 18th of April last. You made that statement and I believe the Captain understands it.

(Testimony of John E. Wahlgren.)

Q BY MR MONAHAN: Did you see the life buoys on the 18th of April last?

A Yes, sir.

Q Before this happened?

A Yes, sir.

Q And they were attached to the rail in the manner you have described?

A Yes, sir.

Q Were there any life buoys thrown to Mr Hoeffner when he was in the water?

A Yes, sir.

Q There were life buoys thrown?

A Yes, sir.

Q Who threw that life buoy?

A The sailor sitting right over there.

Q Which sailor?

A VOICE: Me.

THE COMMISSIONER: What is his name?

A VOICE: Gibson.

Q BY MR MONAHAN: Where was the vessel when he threw this life buoy?

A I was backing the vessel to stop the headway, then he throwed the life buoy.

Q How far away was he from the life buoy—was the ship from the deceased?

A I couldn't state. I was on the bridge and couldn't see.

Q Did you see this man throw the life buoy?

A No, sir.

Q You didn't see him?

(Testimony of John E. Wahlgren.)

A No, sir.

Q Well now, I am asking you for facts within your own knowledge. Is all your testimony just alike?

MR CRIDER: I object to that question.

THE COMMISSIONER: The objection is sustained.

MR MONAHAN: I am finished with the witness. You can have him. Excuse me, a minute. Captain, how long have you been at sea?

A About 32 years.

Q And on what class of vessels have you served previous to going on the Brunswick?

A Different classes of vessels, sailing and steam.

Q Sailing vessels, too?

A Yes.

Q What sailing vessels?

A Square rigged, fore and aft rigged vessels and steamers of different types and sizes.

Q How long ago since you served on square rigged vessels?

A I came out to San Francisco in a barkentine in 1898, the last square rigged vessel I been in.

Q Is a barkentine a square rigged vessel?

A It is on the foremast

Q What kind of rigging secures the foremast to the barkentine?

A What kind of rigging?

Q Yes, to secure the foremast?

A The rigging is wire rigging.

Q What is this rigging called?

(Testimony of John E. Wahlgren.)

A There is backstays and stays of all kinds.

Q Anything else besides backstays to secure that mast?

A That's all.

Q That is, —

A And mainstays to lower—

Q I am talking about the foremast. The only secure you had to the foremast of this barkentine you were on were the backstays?

A Oh, no.

MR CRIDER: It seems to me this is incompetent what gear or rigging there was on a vessel in 1898.

MR MONAHAN: What rigging was on this vessel in 1898 is immaterial, but what this witness knows about handling a ship is material. That is the point we are getting to.

THE COMMISSIONER: I will sustain that objection.

MR MONAHAN: The issue here, may it please the Court, is this: Was this vessel seaworthy, was the Brunswick seaworthy on the 18th of April last?

MR CRIDER: But not some vessel in 1898.

MR MONAHAN: To determine whether the Brunswick was seaworthy on that day you have to determine equipment of the vessel and her officers and the competency of her officers and men, and that is the point I am reaching.

THE COMMISSIONER: I will sustain the objection but, for the purpose of preserving the record,

(Testimony of John E. Wahlgren.)

if you so desire, I will let the Captain answer the question.

Q BY MR MONAHAN: What standing rigging secured the foremast of the barkentine you referred to?

A Wire rigging. And they have particular names, and if you want—

MR MONAHAN: I want the Captain to answer my question. When I want further information I shall ask for it.

THE COMMISSIONER: He is answering it.

THE WITNESS: I say any particular name you want to know in regard to it, I can answer.

Q You answer my questions. What is this wire rigging? Can you further describe this wire rigging?

A I don't understand what you are asking.

Q Can you further describe what this wire rigging consists of? If you don't know, say so.

THE COMMISSIONER: If you don't understand his questions—

A I don't understand the question and I can't answer the man satisfactorily in that regard.

Q BY MR MONAHAN: I have asked what did this wire rigging consist of?

MR CRIDER: You are talking about a boat in 1898?

MR MONAHAN: Yes.

THE COMMISSIONER: You make the same objection?

(Testimony of John E. Wahlgren.)

MR CRIDER: Same objection.

THE COMMISSIONER: Same ruling. Let him answer the question for the purpose of preserving the record.

Q BY MR MONAHAN: What do you understand about navigation, Captain? Are you a practical navigator?

A I passed an examination to that effect.

Q I am glad you told me that. When did you pass this examination for master?

A About 12 years ago.

Q For what class of vessel have you got a master's certificate?

A I got a master's certificate for a steamer on any ocean, an unlimited master's license.

MR MONAHAN: That's all.

THE COMMISSIONER: Cross examine.

CROSS EXAMINATION

BY MR CRIDER:

Q Now, Captain, how many of these buoys did your vessel have on it on this date?

A Life buoys?

Q Yes.

A We had four.

Q Four of them. And how many life boats such as you have described?

A Two.

Q And you say that they were lowering a life boat, started to lower—

A They started to get one ready to lower.

(Testimony of John E. Wahlgren.)

Q Were there any other buoys thrown from any other boat or vessel to this man other than the one that was thrown from your vessel?

A The pilot boat coming up the bay, the man in charge of the pilot boat, he threw a buoy on top of the man.

Q Where did that buoy that the man from the pilot boat threw, strike, with reference to the man who was in the water?

A He threw it as near as he could possibly get.

Q And you say it lit on top of him?

A Just about, the man was at the time, when he seen it, the man was ready to sink, and he threwed this life ring as close to him as he could.

Q It struck on top of the man?

A Almost, as near as I could see. I was watching.

Q What you are talking about now, this life buoy the pilot man threw that struck on top of him, you saw that with your own eyes, did you?

A Yes, sir.

Q Your machinery responded all right, did it, when you gave the orders?

A Yes, sir.

Q And all of the appliances were used in stopping the boat that possibly could have been used?

A Yes, sir.

Q I am not up in technical seamanship like my friend, Mr. Monahan, but it is possible to just stop a boat like that—instantly?

(Testimony of John E. Wahlgren.)

MR MONAHAN: I object to that as calling for a conclusion of the witness.

MR. CRIDER: I think he is competent to answer.

THE COMMISSIONER: Objection overruled.

Q BY MR CRIDER: I mean it requires some little distance to stop a boat when you apply the machinery?

A Yes, sir.

MR MONAHAN: I would rather the proctor frame his questions in an interrogatory form and not make statements leaving the witness to confirm them.

THE COMMISSIONER: This is cross-examination.

MR MONAHAN: He is not asking questions; he is making statements.

MR CRIDER: I am asking leading questions. You saw fit to put the Captain on as your witness.

MR MONAHAN: There is no question about your asking leading questions. This is not a question at all.

THE COMMISSIONER: Objection overruled. Answer.

MR CRIDER: I believe you did answer.

A Yes, sir.

Q With reference to this lumber that was piled on the deck, Captain, how high was that piled up above the floor—I guess you would call it the deck?

A About 8 or 9 feet.

Q Pardon me if I don't use the proper technical terms, but let us suppose that this table here that we

(Testimony of John E. Wahlgren.)

are sitting at, suppose the top of that table is where the floor of the Brunswick deck is, then, it would be piled up about high above that?

A All depends. About 8 or 9 feet, I should judge, right forward.

Q As I understand it, this sling of lumber that Mr. Hoeffner was working with, was the sling itself on top of that pile of lumber?

A Yes, sir.

Q How big was the sling, Captain, the sling of lumber?

A Well, I didn't size it up. I should judge it was about, probably, 20 inches high, that he was trying to put the sling around.

Q Did you see him working with the sling on that batch of lumber?

A No, sir.

Q Now, you made some reference to a boat, a steamer, I believe, a big steamer coming from the opposite direction, and a pipe line.

MR MONAHAN: I don't remember that.

Q BY MR CRIDER: Now, Captain, have in your mind the direction in which the Brunswick was proceeding and just explain where this steamer was that to some extent interfered?

A The steamer was coming up the bay going in the same direction I was going.

Q On which side was it on?

A It was on the east side of San Pedro channel

(Testimony of John E. Wahlgren.)

more than I was. I was on the west side more and he was on the east side, proceeding up the bay.

Q Going in the same direction?

A Yes, sir.

Q Was it to your right or left?

A That is to my righthand side standing facing the bow of the vessel.

Q Where was this pipe line?

A Just placed about the middle of the channel between the San Pedro lumber yard and Blinn's yard.

Q On what side of you, in the direction you were proceeding, is the pipe line?

A The righthand side, the starboard side.

Q What kind of pipe line was that, Captain? Was it from the dredge or was it an oil pipe line?

A It is a dredge pipe line.

Q It was a string of pipe that run to this dredge?

A Yes.

Q Now, Captain, you have followed the sea continuously for how long, did you say?

A 32 years.

Q About 32 years. Now, with reference to the sailors that were on the Brunswick at this time, were they experienced sailors, if you know?

A Yes, sir.

Q Had you ever found any one of them to be incompetent?

A No, sir.

Q They had always performed their duties properly?

(Testimony of John E. Wahlgren.)

A Yes, sir.

Q You were familiar with your men, were you?

A Yes, sir.

Q As soon as you heard the cry of "Man overboard", you gave the order to stop?

A Yes, sir.

Q BY THE COMMISSIONER: What length of time elapsed between the time you heard the cry of "Man overboard" and the time your vessel was backing up?

A I guess about two or three minutes.

THE COMMISSIONER: That's all.

REDIRECT EXAMINATION

BY MR MONAHAN:

Q Captain, with reference to this steamer you testified as coming up on your starboard quarter, how far away from you was that steamer, just approximately?

A Well, I couldn't exactly, about 2000 feet probably—somewhere in that neighborhood.

Q That is satisfactory. And you found the dredge with her pipe line resting on mud scows on your starboard side?

A Yes, sir.

Q What was the distance between the Kerckhoff Lumber Company dock, that is, the San Pedro side, and this pipe line that you referred to, approximately—just about what distance?

A Approximately about 1,500 feet, somewhere in that neighborhood.

(Testimony of John E. Wahlgren.)

Q 1,500?

A Probably.

Q And the length of your vessel is 162 feet?

A Yes.

Q What is her speed?

A She goes about 9 knots an hour.

Q Do you know whether that man, the deceased, John H. Hoeffner was rescued, or whether he was drowned?

MR CRIDER: We will stipulate he drowned, Mr. Monahan.

MR MONAHAN: I am asking him.

A He drowned.

Q He was drowned?

A Yes.

Q Did you make any report of that fact?

A Yes, sir.

Q To whom?

A To the United States Inspectors.

Q To who?

A To the United States local inspectors in San Pedro.

Q The local inspector?

A Yes, sir.

Q Did you make your report to any other person about it?

A Yes, sir, the insurance company.

Q Did you make your report to any other government official about this thing?

A No, sir. That's all that is required.

(Testimony of John E. Wahlgren.)

Q You made no report to the United States collector, did you?

A No, sir.

Q What duty, if any, did you owe to the vessel who was overtaking you, according to inland rules of the road?

MR CRIDER: I think that is incompetent.

A That all depends.

THE COMMISSIONER: Overrule the objection. Answer the question.

Q BY MR MONAHAN: My question is susceptible of an answer. What duty, if any, did you owe to a vessel overtaking you when an emergency arose of a man overboard?

MR CRIDER: Just a moment; I don't understand you to claim that this big liner, this steamer you are talking about was overtaking him, do you?

MR MONAHAN: That's what you call a vessel coming up—overtaking.

MR CRIDER: Is that right?

A Yes, sir.

THE COMMISSIONER: They were going in the same direction?

A Yes.

THE COMMISSIONER: Was it ahead of you or to your stern?

A It was coming behind me.

MR CRIDER: I misunderstood it.

THE WITNESS: It all depends. If he gave me

(Testimony of John E. Wahlgren.)

a signal to pass me, I would have to answer the signal.

Q At 2000 yards?

MR CRIDER: Hold on; there is no testimony about 2000 yards.

Q BY MR MONAHAN: 2000 feet on your star-board quarter you have an emergency such as man overboard—I am asking now, what duty, if any, do you owe to that overtaking vessel?

A Well, in order to avoid a collision with him I would have to get out of the way for him, to not have a collision with him.

Q That is your answer, is it, Captain?

A Yes, sir.

Q And that is your conception of the inland rules of the road, is that right?

A He didn't—

Q Is that your conception of the application of the inland rules of the road—say yes or no.

A I wouldn't state for one way or the other because I don't understand what you are trying to get at. The man coming up behind me and giving me a signal to pass me, why—

Q We are not talking about a hypothetical case. I have asked a specific question.

THE COMMISSIONER: You asked him a hypothetical question.

MR MONAHAN: No. I asked him from the evidence in here.

MR CRIDER: No, pardon me.

(Testimony of John E. Wahlgren.)

THE COMMISSIONER: You stated a hypothetical question—you said if any emergency, with a man overboard, what duties do you owe a vessel overtaking you?

MR MONAHAN: Exactly. That question was susceptible of an answer. Instead of that he is going away on collateral issues entirely. He can answer the question any way he likes but let him answer it.

A In order to avoid having a collision at the same time I am trying to save this man I am not going to put my vessel in front of the steamer coming toward me and have him to run into my vessel.

THE COMMISSIONER: Are there any different rules of the road in cases of emergency like the present, other than the ordinary rules?

A No, sir.

MR MONAHAN: You say there is no difference between the ordinary rules and the inland rules of the road? You said no to that?

A I didn't answer no on that question.

THE COMMISSIONER: I didn't ask him that question.

MR MONAHAN: I would like to put this question to him again. Read the question.

THE REPORTER: (Reading) Are there any different rules of the road in cases of emergency like the present and the ordinary rules?

A Not that I know of. In a case of that kind—

MR CRIDER: What were you going to say? In case of that kind—what?

(Testimony of C. Gibson.)

A I say in a case of that kind, a man being overboard and a vessel—the way my vessel is fixed and the vessel coming up behind me, in a case of that kind, I don't know whether the rules call that—I can't block up the channel for that man coming behind me. If I did he would run into me.

Q BY MR CRIDER: Was he coming full speed?

A No, sir. Nobody can come up full speed in that channel.

Q BY MR CRIDER: Did you throw any lines in this case yourself, Captain? Did you throw any line overboard yourself?

A Not personally, no, sir.

THE COMMISSIONER: Is that all for this witness?

MR MONAHAN: Yes, that's all.

THE COMMISSIONER: Call your next witness.

C. GIBSON,

a witness called on behalf of the libelant, being duly sworn, testified as follows:

DIRECT EXAMINATION

Q BY THE COMMISSIONER: What is your name? ff

A C. Gibson.

BY MR MONAHAN:

Q State your name, age, residence and occupation?

A 42 years old. 1349 Pacific Street.

(Testimony of C. Gibson.)

Q You served on board the lumber schooner Brunswick on the 18th of April last?

A Yes, sir.

Q In what capacity?

A A. B.

Q Where did you ship?

A I shipped in the Brunswick in San Francisco. I think it was the 3rd of April. Wasn't that the time I shipped in the Brunswick, Captain—the 3rd of April?

THE COMMISSIONER: Just answer the questions.

THE WITNESS: I am not sure of that.

Q BY MR MONAHAN: Did you see John A. Hoeffner fall overboard from the Brunswick?

A No, sir.

Q. Just tell the court what you know about that case?

A Well, all I know about the case is I was aft. We just took the lines in and was going to move over to Blinn's and I was standing aft.

Q Which side?

A On the starboard side, aft, and I heard the fellows run up top and they were all looking outside and I looked over to see what it was and the fellow came floating by and he was paddling along this way, with his face—

MR MONAHAN: Indicating with his hands.

A (Continuing) And he was turned the other way. He was turned down the river, not the same way the Brunswick was going.

(Testimony of C. Gibson.)

Q Facing a southerly direction.

A Yes. I jumped on the house where the life boats were and four life buoys on the stern of the ship—

Q On the deckhouse?

A Yes, right hanging over the stern of the ship—

Q Hanging over the top rail?

A In a rack.

Q Rack?

A Canvas—call them “suspenders” same as you put suspenders on. They were stuck in that.

Q You mean a strap?

A Strap, yes. And I got up there and one long-shoreman says, “Its a time to take this life preserver out”, but instead of lifting it out, he was pulling it this way, against the rail, and he couldn’t get it out that way so I just got hold of this life preserver and threw it overboard.

Q How far away was the ship from this man at this time?

A Oh, well, the man was pretty well astern that time when I throwed this over.

Q What kind of line was attached to this life buoy?

A Just a common small manila rope as big your finger.

Q Describe it now. You are an A. B. Describe just what this line was?

A It is an ordinary manila rope, what we use for heaving line.

Q Can you give any better description of that line than that?

(Testimony of C. Gibson.)

A That's all you could describe it, about 15 feet long.

15 feet what?

A Or 15 fathoms.

Q That is the best description of the manila line you can give?

A That is attached to the buoy. And this line is also made fast to the rail of the ship so when you throw the line overboard she only goes so far and no further.

Q I should imagine so.

A Yes.

Q Now, you are sure you threw this life buoy overboard, are you?

A Yes, I am sure of that.

Q How long have you been going to sea?

A I have been going to sea since I was 13 years old.

Q On what classes of vessels have you been going to sea on?

A Steamers and sailing vessels, square riggers.

Q Square rigged vessels?

A Yes.

Q How old are you?

A 42 years old.

Q And you have been going to sea since you were 13 on square rigged vessels and on steamers?

A Yes.

Q And you are unable to describe a piece of manila line better than to say it was just so thick?

(Testimony of C. Gibson.)

A Well, you know what heaving line, manila rope is?

Q Yes. In what capacity have you been going to sea all this time?

A When I first went to sea I went as cabin boy.

Q That accounts for it. How fast was the ship going at the time you threw this life buoy overboard?

A The ship wasn't going very fast.

Q How fast was she going, about.

A Well, I guess she was making a couple of miles an hour.

Q When were you examined for A. B.?

A I never been examined for A. B.

Q All right. You can't tell just about how fast a vessel is going?

MR CRIDER: The witness has answered you.

THE WITNESS: I told you about two miles an hour.

Q BY MR MONAHAN: Two miles?

A I should guess about that.

Q Do you mean two miles an hour or two knots an hour?

A Well, call it knots. I call it miles.

Q You call it miles?

A Yes.

Q That is also satisfactory.

MR CRIDER: I am glad you are getting so many satisfactory answers.

Q BY MR MONAHAN: Did the vessel stop?

A Yes, sir.

(Testimony of C. Gibson.)

Q How far away from the man was she when she had stopped?

A When the vessel stopped, this fellow was quite away astern.

Q Quite away astern?

A Yes, quite away astern before I got to throw him this buoy.

Q Approximately how far away was he at that time?

A Well, he was about, over 30 feet away, anyway.

Q With reference to the Kerckhoff lumber Company dock, where was the vessel—now, you remember the Kerckhoff Lumber Company dock—can you fix that place in your mind?

A I can fix the San Pedro yard. That is the place we were laying at and we just moved away from there.

Q There is another dock running along in the same direction upstream called the Kerckhoff Lumber Company dock?

MR CRIDER: I object to that kind of questioning. You are describing a place and telling him what it is and asking him what it is.

MR MONAHAN: I am trying to help him fix the locality. of the shore line. I want to ask him in relation to that shore line where was the vessel.

THE COMMISSIONER: What is the objection?

MR MONAHAN: Withdraw the question.

Q What happened after the vessel stopped, if anything?

(Testimony of C. Gibson.)

A What happened?

Q Yes.

A Well, I throwed that life preserver as quick as I got up there.

Q After that, that was when the vessel stopped, was it?

A They were getting the boat ready but I didn't go to the boats because I was attending to the life preserver.

Q What happened then?

MR CRIDER: Let him finish.

THE COMMISSIONER: What happened when the boat stopped? Go ahead.

A That was all I know—what happened. I had a life preserver and they were getting the life boats ready to go after this fellow and then there were two launches, one launch and that boat from the dredger. Then we sung out for them to get this fellow. I was singing out like anything myself to draw attention of those fellows to come to this drowning fellow, and this pilot boat, what they call it, I know it was a white painted boat, that was coming up the river and he got close to this man what got drowned and I don't know if he reached him. I didn't see him throw a life preserver but I think the man in the launch reached for the drowning man and he got his hat.

Q BY MR MONAHAN: How far were you at that time from the man in the water?

A Well, we were quite a ways from him.

(Testimony of C. Gibson.)

Q Quite a ways?

A Yes. But I seen when this follow reached for him.

Q After that did the vessel get under way?

A She laid there quite a while before she got under way and went over to Blinn's.

Q She just went from where she was into Blinn's lumber Company yard?

A Well, she left from there, yes. She went over to Blinn's but not straight over. We had to go around a kind of a bend and around the dredger with the pontoons.

Q Did you see any dolphin there?

A No, sir.

Q You didn't see a dolphin?

A No, sir.

CROSS EXAMINATION

BY MR CRIDER:

Q Then, as I understand it, this pilot boat came right up to the very spot where the man was?

A Yes, sir.

Q And you saw somebody in that boat reach out and grab?

A Grab, yes. He got his hat.

Q He got the drowning man's hat?

A Yes.

Q Did you see that yourself, see him get his hat?

A Well, he came down and told the old man he just missed him, told that to the Captain, and he had the drowned man's hat in the launch.

(Testimony of C. Gibson.)

Q Now, when you heard this cry "Man overboard" and went to get this buoy to throw it over, did you saunter along leisurely or did you hurry?

A No, I never heard the cry of "Man overboard" because I was down on the poop in the stern of the ship. We were getting the lines for when we got to Blinn's to make the ship fast. I heard these fellows running forward along the house and I heard them and I looked out to see what was going on and I seen them all excited and looking outside, and I looked and see a man floating by and I knew a man was overboard.

Q When you saw this man overboard, knew he was overboard, then you went to get the buoy?

A Well, I ran up on the house. There was a longshoreman there trying to get the buoy.

Q When you went to get that buoy did you hurry or didn't you?

A Certainly I hurried right up.

Q You say you have followed the sea since you were 13?

A Yes.

Q Tell us what you have done since that time. How long were you a cabin boy?

A I was a cabin boy for about six months and always in a ship.

Q What did you do after that?

A Then I went as ordinary seaman.

Q Then what did you do after that?

A I been going to sea ever since.

(Testimony of C. Gibson.)

Q What seas have you sailed?

A Sailed in Europe, sailed out here, back east Russia, all over.

Q Been to sea constantly since that time?

A I have been making my living at the sea

Q That's all you have done?

A Yes.

Q You earned your living that way?

A Yes, sir.

Q You said there were four buoys up there?

A Yes, sir.

Q How many life boats were there on this Brunswick?

A There were two life boats on the Brunswick?

MR CRIDER: That's all. Mr. Monahan is putting these witnesses on but I understand if I want to call them as my witnesses I may.

THE COMMISSIONER: Oh, yes.

REDIRECT EXAMINATION

BY MR MONAHAN:

Q You say you have been following the sea since you were 13?

A Yes.

Q And that you served on square rigged vessels and steamers?

A Yes.

Q With the exception of the six months which you served as cabin boy, what kind of square rigged vessels did you serve on?

(Testimony of C. Gibson.)

A I was on barks, full rigged ships, schooners, barkentines.

Q What kind of standing rigging do you have in the foremast of this barkentine?

MR CRIDER: I offer the same objection.

MR LONG: The same ruling.

A The rigging of the ship? They are all the same. All ships got the same rigging.

MR CRIDER: Let His Honor rule.

THE COMMISSIONER: I will sustain the objection. However, if you think it is material and you want to put it in, he can answer the question for the purpose of the record.

MR MONAHAN: Go ahead.

A Well, they are pretty near all the same, only some of them have hemp lanyards, and instead of wire rigging they have hemp.

Q Of what does this standing rigging of the foremast of this barkentine consist of?

A The rigging of a barkentine?

Q The standing rigging of the foremast?

A Of a barkentine?

Q Yes.

A It makes no difference, barkentine, or full rigged ships—it is the same rigging.

Q Either one?

A It is wire, with stays.

Q That is the best description you can give of this rigging, is it?

(Testimony of K. Lind.)

A Well, what is it made of? It is made out of wire and some of hemp.

Q Is that the best description you can give of standing rigging? A. Yes. That's all I know what you call it—standing rigging.

Q The Captain just preceded you as a witness testified that the foremast was supported by backstays?

A Well, they have backstays and they have the rigging goes up that way. That's what I call the rigging of a ship.

MR MONAHAN: All right. That's all.

(Short recess.)

(After recess.)

K. LIND,

a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Q BY THE COMMISSIONER: What is your name?

A K. Lind.

BY MR MONAHAN:

Q Will you please state your age, residence and occupation?

A 375 Manila Avenue, Oakland.

MR CRIDER: Got a 'phone there?

A Yes, Piedmont 6294-W.

Q BY MR MONAHAN: Were you serving on board the lumber schooner Brunswick on the 18th of April last?

(Testimony of K. Lind.)

A Yes, sir.

Q In what capacity?

A First mate.

Q Eh?

A As First mate.

Q What is your duty as a First Mate regarding the loading and unloading of the vessel?

A Superintend the working, looking after the charge of loading, and unloading of the vessel.

Q Was John H. Hoeffner employed on the vessel on the 18th day of April last?

A Yes, sir.

Q After leaving the San Pedro Lumber Company's docks or at any time, about 8 o'clock in the morning, did you give the deceased any orders?

A Yes, I gave him orders.

Q What orders did you give him?

A I gave him orders to, I told him to start to sling up the lumber, get the sling ready.

Q What time was this, about?

A Just about two or three minutes past eight.

Q Were you under way at that time?

A Yes, sir.

Q Did you have any railing around the part of the ship where the deceased was working or did you have life lines there?

A No, there was nothing at all there.

Q Just a flush deck?

A Flush deck.

(Testimony of K. Lind.)

Q That part of the deck was flush, no rail or bulwarks and no life lines?

A No.

Q Did you see the deceased fall overboard?

A No.

Q Did you hear the cry "Man overboard"?

A Yes.

Q What, if anything, was done by you at that time?

A When I heard the man holler I was turning my back to them and I heard a man on the forecastle holler "Man overboard". Then I went aft and I hollered to the captain. He was standing on the port side.

Q The port side of the bridge?

A The port side of the bridge. I said, "there's a man overboard" and I walked aft around on the port side to go after the life boat—

Q On the port side?

A Yes. I walked around to see the captain and then walked aft. I saw the man by that time, the man was pretty well astern and there was two boats there launched and the boat alongside the pipe line over there, and there was somebody was hollering to him about 100 feet or probably more from the man at that time to go and get him. They didn't seem to understand it right away, see? And I says, "Come on, we will get the boat ready, get them over." By that time them people launched two boats and they pull over to the man. When they was up to the man, pretty close to him, we consider well, he would be safe, any-

(Testimony of K. Lind.)

way, for the simple reason we didn't swing the boat overboard because he was right alongside of him.

Q What life boat did you decide upon launching?

A The port life boat.

Q Did you have a life boat on the starboard side?

A Yes, sir.

Q Where was that life boat?

A The life boat was in the rack, in the place where it belonged.

Q What do you call that place?

A We set the boat down and we have brackets on that and—

Q I am asking you what do you call that place where the life boat rests—what do you call that?

A Where the life boat rests?

Q Yes.

A A rack.

Q Was the life boat hanging to the davits?

A No.

Q Where was she then?

A Standing in the place.

Q What do you call that place?

A I call it a rack.

Q And you have that boat secured by two turnbuckles?

A We don't have any turnbuckles, regular clip trip hooks that slip over, just kick them off and the boat is loose.

Q What do you call that?

(Testimony of K. Lind.)

A Trip hooks. It has a link below that comes together and we just put the link over the two parts.

Q I know, what do you call that?

A Trip hooks.

Q That is the name you have for it?

A That is the name I generally use, yes.

Q Did you see anybody there throw a life preserver over?

A No, I didn't see it. I saw a life preserver laying on the deck when I came aft.

MR CRIDER: When you came what?

A When I came aft.

Q BY MR MONAHAN: A part of the lumber was unlashed at the time?

A Yes, part of the lumber was unlashed.

Q Eh?

A Yes, part was unlashed.

Q How many life buoys did the vessel carry?

A Four.

Q Where are those four, where are those four located?

A Four located right aft on top, around the top deck aft on the rail there.

Q Wouldn't that description fit anywhere from midship line to the taffrail that you just gave me?

A I beg your pardon?

Q Wouldn't that description you have just mentioned fit anywhere from midship line over to the taffrail?

(No response.)

(Testimony of K. Lind.)

Q Can you describe any better the location of the life buoys than what you have already done?

A Right aft of the top deck, right aft the stern. hanging over the stern.

Q What do you call that rail—have you got a rail around the stern?

A Yes.

Q What do you call that?

A Hand rail.

Q Is that the name of the rail you have around the stern of the vessel?

A Yes.

Q How long have you been going to sea?

A 25 years.

Q On what class of vessels?

A Sailing and steam.

Q. What class of sailing vessels and steam vessels?

A I been on schooners, square rigged.

Q What rig was the Brunswick?

A What rig?

Q Yes.

A One mast.

Q What is that mast called?

A Foremast.

Q What is the standing rigging for that mast? What kind of standing rigging have you got for that?

A Three stays standing rigging and then we have two hatch stays and two more stays.

Q What do you call them?

A Backstays.

(Testimony of K. Lind.)

Q How were those stays fitted over the masthead?

A On a slip over the masthead.

Q How were they fitted to the masthead?

A Two fore stays and two backstays going up around the mast.

Q How were they fitted to the masthead?

A A band is fitted around the masthead and a shackle.

Q About these schooners you have been on, fore and aft rigged vessels, what kind of rigging did you have on the main mast of that vessel?

MR CRIDER: For the purpose of the record I make the same objection—incompetent, irrelevant and immaterial.

THE COMMISSIONER: Same ruling.

A There is a forestay.

Q The fore what?

A The forestay.

Q I mean the main mast.

A Backstays.

Q I mean the main mast.

A You mean the main mast on a barkentine?

Q Yes.

A There is backstays between the two masts, and there is the main rigging and backstays.

Q What do you call the main rigging?

A The main rigging is the main rigging.

Q Could you describe the main rigging any better than the main rigging?

(Testimony of K. Lind.)

MR CRIDER: This is entirely too general. What particular boat are you referring to?

MR MONAHAN: Any vessel. What vessel he likes, any barkentine he ever sailed on. Did you serve on a barkentine?

A Yes, sir.

Q Describe the rigging on the main mast of the last barkentine you served on.

MR CRIDER: Let's get what barkentine that was. These questions are too general.

Q BY MR MONAHAN: What was the name of the barkentine?

A G. C. Weiler.

Q Describe the standing rigging of the main mast of that barkentine?

A There is a spring stay and main rigging and the stays between the mainstay, between the masthead and the foremast, and then there is a stay we call a spring stay.

Q Well, we have got the spring stay. All right. What about the main rigging—what do you call that?

MR CRIDER: We have got a whole crew of a ship here and I certainly object to a continuation of these questions.

THE COMMISSIONER: I think you are wasting time, Mr. Monahan. I can't see the materiality of this.

MR MONAHAN: I can see it and account for it too. He may object. I can see the point I am after.

THE COMMISSIONER: Well, I will sustain the objection, but make it as brief as you can.

(Testimony of K. Lind.)

Q BY MR MONAHAN: What kind of life boats did the Brunswick carry?

A Two wooden life boats.

Q Can you describe those life boats?

A Well, they are 20 feet long and about, I don't know, about 6—

Q 20 feet long. Can you give any further description of those life boats?

A Yes. 4 or 5 foot beam on them.

Q Beyond the dimensions can you give any further description of them so that if I went down I would know what class of boat to look for?

A The customary equipment, all equipment with air tanks.

Q Did you have a compass on the life boat?

A Yes.

Q What make of compass?

A I don't know what make it is—Thompson.

Q What kind of compass did you have for the ship, the Brunswick herself?

A I have forgotten.

MR MONAHAN: That's all.

CROSS EXAMINATION

BY MR CRIDER:

Q Now, Mr. Lind, there was lumber piled on the deck of this boat, the Brunswick wasn't there, at the time this happened?

A Yes.

Q About how high up was that lumber from the floor of the deck?

(Testimony of K. Lind.)

A I guess right from the floor, I guess there was about 9 feet.

Q The lumber was piled so that the lumber extended up 9 feet?

A No. Yes, but a man that was working at that time, he was about 9 feet from the deck.

Q What I mean is this—let us suppose this table is the deck. The lumber extended about 9 feet?

A Yes, about 9 feet.

Q The lumber was piled all over the deck?

A Yes.

Q This man was on a sling on top of this lumber?

A Yes, he was building up a sling, him and his partner.

Q Did you see him working on this lumber?

A Yes, I saw him working on that lumber.

Q Who fixed the sling for him, who arranged his sling load of lumber?

A Two of them were working there, two men was working putting the sling around.

Q And he was one of the two?

A Yes, he was one of the two men.

Q Did you ever see any rails around a boat like this Brunswick that was hauling lumber where rails extended by the lumber?

A No.

MR MONAHAN: I object to that as incompetent, irrelevant and immaterial. I never referred nor expect a rail or life line to be that high.

(Testimony of K. Lind.)

THE COMMISSIONER: The objection will be overruled. Proceed.

Q BY MR CRIDER: On a lumber schooner with a flush deck like the Brunswick, they are not equipped with rails anyhow, are they?

MR MONAHAN: Same objection.

THE COMMISSIONER: Same ruling.

Q BY MR CRIDER: The question is, Mr Lind, let us suppose that this table was the deck of the Brunswick; what I want to know is, on lumber schooners with a flush deck like the Brunswick where they have lumber piled 9 or 10 feet high, they don't have a hand railing around the edge?

A Not on the edge of the deck load, no.

Q How long did you say you followed the sea?

A About 25 years.

Q 24?

A 25.

Q You followed the sea constantly during all that time?

A Yes.

Q What seas have you sailed?

A Sailed out to England and around here. I been around here for the last 18 or 20 years.

Q Up and down the coast here?

A Yes.

Q Never been on the other side?

A Yes, I was on the other side, too.

Q About how many boats have you worked on dur-

(Testimony of K. Lind.)

ing that time—I don't want you to say exactly how many but is it as many as five or as many as twenty?

A Well, it is as many as five, anyway.

Q Now, you saw this man in the water?

A Yes.

Q You saw him go down, did you?

A I saw him go down.

Q And noted that he did not come up any more?

A No, not that I saw.

Q When you saw him go down how many boats were there up around there, the immediate place where he went down?

A There was three boats.

Q What size were those boats?

A Well there was one skiff there pulled by hand and two gasoline launches.

Q Let's get the first one.

A A skiff.

Q You mean, that is rowed by oars?

A Yes, rowed by oars.

Q What was the next one?

A The next one was two gasoline launches.

Q Then what?

A That's all the boats.

Q As I understand it, those three boats, then, were scouting or cruising or running back and forth around this place where the man went down?

A Yes, they was right there.

Q I believe you say you saw one of the life preservers on the deck, did you?

(Testimony of K. Lind.)

A On the deck when I stepped out, when I came aft.

Q That life preserver was out of its sling, was it?

A Yes.

Q It wasn't in this sling or suspenders?

A No.

Q Was it laying on the deck?

A Yes.

Q What was its condition with regard to being wet or dry?

A It was wet.

Q Will you describe for the purpose of this record, in your seaman's language, just where was this sling on the deck that this man fell off of?

A He was working on the starboard side forward on the deck.

Q And can you describe it any more exactly than that, Mr. Witness, please—pardon me so I will give you an idea of what I mean. I don't understand seaman's terms, but if you were to ask me where those books are, I would tell you they were on the right side and at the extreme corner.

A Yes.

Q Describe it that way.

A On the extreme corner on the deck-load, extreme corner, way out.

Q Forward or aft?

A Forward.

Q Which side?

A On the right-hand side.

(Testimony of K. Lind.)

Q Near what part of the ship?

A The forward end.

Q The forward end of the deck-load?

A Yes, forward end of the deck-load.

Q How long had you been working on the Brunswick?

A Off and on for five years.

Q When were the government inspectors on your boat last before this accident happened?

MR. MONAHAN: Objected to as incompetent, irrelevant, and immaterial. There is a presumption before the court that the local inspectors will do their duty and have done it, and it has no particular bearing on this issue at all.

THE COMMISSIONER: I will overrule the objection. Exception.

Q BY MR. CRIDER: When were the government inspectors on the Brunswick last before this accident happened?

A The last before that accident, it is a year ago the 12th of December. That was the last inspection, wasn't it, Cap?

Q Just a moment: As far as you recollect.

A Yes; somewhere in the neighborhood of there.

Q It would be in the December before this April that this accident happened then, it would be a year last December and this accident happened April of this year. Do you mean a year ago this coming December?

A This coming December is a year.

(Testimony of K. Lind.)

Q This accident happened in April?

A Yes.

Q And it would be the December before that April?

A Yes, it would be from December to April.

MR. CRIDER: I want you to read what Mr. Monahan said just now.

THE REPORTER: "There is a presumption before the Court that the local inspectors will do their duty and have done it, and it has no particular bearing on this issue at all".

MR. CRIDER: You don't want to stipulate the equipment found by the inspector was satisfactory to you, do you?

MR. MONAHAN: No. It is immaterial to this question.

MR. CRIDER: It is immaterial to the question?

MR. MONAHAN: Yes.

THE COMMISSIONER: I would like you to explain to the Court why you were so particular to find out what the arrangement on the boat was and how the boat was equipped, and so on, if it is immaterial.

MR. MONAHAN: I will reserve that, with the Court's permission, to a later stage of this trial.

THE COMMISSIONER: I have permitted you to go into all that because I thought it was material.

MR. MONAHAN: I would be very glad to explain all of that at a later stage of the trial, very glad, and I will do it without any particular invitation at all. I will cheerfully do it.

Q BY MR. CRIDER: I forgot what you said

(Testimony of K. Lind.)

that first brought it to your attention that there was a man overboard. What did bring it to your attention first?

A A man on the forecastle head cried, "Man overboard".

Q What did you do then?

A I went right out and hollered to the Captain and said, "There is a man overboard; back up".

Q Did the boat stop immediately then?

A Yes; he stopped the boat.

Q In your experience as a sailor, based on this experience that you have testified to that you have had, is it possible to stop a boat immediately—I mean without it moving forward at all, after an order is given?

A No. If the boat has headway, making headway, if you stop, especially if the vessel is loaded, see, she wouldn't stop right away.

Q If you slam on everything you have got, it won't stop immediately, will it?

A No.

MR. CRIDER: I think that is all.

REDIRECT EXAMINATION

BY MR. HONAHAN:

Q Where were you when you heard the cry "Man overboard"?

A I was forward.

Q Forward?

A Yes.

Q And then you went to the Captain, you walked over to the port side?

(Testimony of K. Lind.)

A Yes.

Q Did you call out to the Captain before you got to him?

A Yes.

Q And did he stop the engine?

A So far as I know, I guess he did. I didn't—

Q I asked you to testify to facts within your knowledge. You testified here in answer to your proctor that he did stop the engine.

A Yes.

Q I am asking you how did you know he stopped the engine.

A I can see it.

Q You can see the engine stop?

A I can see the telegraph on the bridge when I go by, and saw the man—

Q You saw the engine telegraph?

A Yes.

Q Where were you at that time?

A I was going aft.

Q You were going aft and could see the engine-room telegraph?

A Yes, the engine-room telegraph, telegraph on the bridge.

Q How far away from the telegraph were you at that time?

A About five feet, six feet.

Q And that's all you know about whether the engine was stopped or not, was just the indicator on the telegraph?

(Testimony of K. Lind.)

A The order he gave, the Captain said, "Stop her", and she was stopped.

Q And you heard him give that order?

A Yes.

Q That's all you know?

A Yes.

Q You don't know whether she stopped or not?

A I presume. I didn't look over the side.

(At this point the Court took a recess until two o'clock p. m. of this day).

AFTERNOON SESSION.

2:00 P. M.

K. LIND,

recalled.

RE CROSS EXAMINATION

BY MR. CRIDER:

Q Mr. Lind, I think you testified there was lumber piled up about nine feet high on the deck.

A Well, that was the height.

Q Let us suppose that the lumber had all been removed from the deck, all the cargo—understand?

A Yes.

Q Remove all the lumber from the deck, was there any rail around there at all?

A Yes. If the whole lumber was out of the deck there would be a railing around.

Q Can you indicate—stand up and show about

(Testimony of K. Lind.)

where that rail would come to on you—stand up and indicate.

A Well, the rail would come to about here.

MR. CRIDER: The witness is indicating a point, Mr. Monahan, which, I think, is about three and a half feet high.

MR. MONAHAN: Yes.

Q BY MR. CRIDER: The idea, then, is there was lumber piled up all around that rail and clear over the top of it?

A Yes.

Q But there was a rail on each side of the vessel about three and a half feet high?

A Yes.

Q Now, when this pilot boat came up to where the man had sank, did you see anybody in the pilot boat make any effort to rescue him?

A Yes.

Q What did you see?

A I see the man came up to him and he threw the life preserver to him.

Q The man in the pilot boat?

A Yes.

Q How far did the life preserver strike from the man in the water?

A As far as I could see, it almost ran close on top of him.

Q Did the man in the pilot boat make any grab or any other effort?

A Yes, he reached out to grab him.

(Testimony of K. Lind.)

Q How close did he grab to the man in the water?

A He must have been pretty close to him, as far as we could see.

Q Did he get any article of clothing?

A He got a hat off the man.

Q Grabbed the hat of the man?

A Yes, he grabbed his hat.

Q And the man sank, did he?

A Yes.

Q He didn't come up any time after that?

A No, sir.

Q Did the three boats that were around there cruise around that point where he sank?

A Yes. They was cruising around there for a while afterwards.

MR. CRIDER: I think that is all.

FURTHER REDIRECT EXAMINATION

BY MR. MONAHAN:

Q Did you see this man in the pilot boat take the hat from the drowning man?

A No, not exactly from the drowning man, but from the position that he was in, right alongside the boat, where the man was, so to take the hat it must be probably laying on the water or on the man's head.

Q You saw him take the hat off?

A Yes.

Q Did you not testify here a few minutes ago that the man in the pilot boat came up and told the Captain—that that was the source of your information?

(Testimony of K. Lind.)

A Told the Captain?

Q Did you or did you not so testify?

A No.

Q You didn't testify that way?

A No, I never testified that.

Q You didn't?

A No, sir.

Q I will ask you, Mr. Reporter, if you will please read his testimony.

(Reporter searches record, but fails to find testimony desired).

MR. MONAHAN: Never mind.

Q You have previously testified there was no railing or lifeline in the space opposite where the lumber was stored.

A Around the boat, no; around the deck-load of the lumber, no, there was none.

MR. CRIDER: He testified there was not nine feet up.

MR. MONAHAN: I didn't say nine feet. I said a lifeline.

THE COMMISSIONER: I want to get him straightened. He did say, I understood him, that when there was no lumber there there was a lifeline around there.

MR. MONAHAN: That was in answer to his question, yes. Previously to that, he testified there was no lifeline in that particular place where the lumber was stored.

THE COMMISSIONER: I want to find out what

(Testimony of K. Lind.)

was done with that line. Ordinarily that line was around there, but when it was loaded with lumber it wasn't there.

MR. CRIDER: I think the record contains some testimony on that. I know I didn't elicit that—of what it was constructed, but whether it was a line or rail.

THE COMMISSIONER: He said a railing.

Q BY MR. MONAHAN: Did you not testify here in answer to a question of mine that in the space opposite where the lumber is carried, that is, the rail opposite, there was no rail there nor no lifeline?

A No.

Q You didn't so testify?

A I testified—no. That there was no lifeline there.

Q You testified there was no lifeline there?

A No, sir. Around the deck-load of the lumber, no. Around the deck-load of the lumber there was no lifeline.

Q Tell me what particular part of the ship this deck-load of lumber that the deceased was standing on when he fell overboard, what particular part of the ship was that?

A It was in the forward part of the ship.

Q Forward of the waist, was it, the waist of the ship?

A Yes, the forward part.

Q Did you have a rail or a lifeline extending from

(Testimony of K. Lind.)

the stem to the stern on both sides of the ship on the upper deck?

A No.

Q That's what I'm getting at. What part of the ship was the rail or lifeline omitted from?

A There was a rail around the aft part of the ship.

Q There was no rail around the aft part of the ship?

A The aft part of the ship, yes, there is a rail.

Q What particular part of the ship is there no rail or lifeline?

A When she was loaded?

Q Yes.

A There is none around the deck-load.

Q Did you not testify a few minutes ago that there was a rail abreast of the lumber, the cargo lumber, about three and a half feet high from the deck—did you or did you not so testify?

A A rail?

Q A rail, yes, a rail—didn't you so testify?

A No, sir.

Q Did you not stand up and indicate the approximate height of the rail on your body?

A Yes; when the deckload is off the vessel.

Q As a matter of fact, there are no rails or lifelines on the outward part of the vessel where the deck-load is carried?

A When she is loaded or in the harbor there is not.

Q No rail or lifeline there?

(Testimony of K. Lind.)

A Around the deck-load in the harbor, no.

Q That is the part of the ship where the deceased fell overboard?

A Yes.

Q And there is no rail or lifelines there?

A No.

Q That's it. You testified previously that the Brunswick was inspected by the local steamboat inspector sometime last December.

A Yes.

Q Is that right?

A Yes.

Q. Were repairs made to the Brunswick in San Francisco about a year and a half ago?

A A year and a half ago?

Q Yes.

A Not that I know of.

Q You don't know.

A No, sir.

Q And you have been five years on the Brunswick?

A Off and on. Sometimes I have been away from her, and sometimes during the five years.

Q Were you attached all during the year 1921?

A To her?

Q Yes.

A Yes.

Q Were repairs made to her at San Francisco during any part of that year?

A Yes.

Q Eh?

(Testimony of K. Lind.)

A Yes.

Q How long ago was that, about?

A She went to dry-dock over to the Union Iron Works at San Francisco about three months ago, three or four, three months ago.

Q 1921?

A 1921.

Q Last year?

A No. That is this year. I am thinking of this year, 1922.

Q At the beginning of my examination I requested that all our attention be confined to not subsequent to April 18. I am asking the question, were any repairs made on the Brunswick at San Francisco during the year 1921, which is last year?

A I couldn't say.

Q You couldn't say?

A No.

Q Were you attached to her during all that year?

A. No, I wasn't.

Q Then you cannot answer the question.

A No.

Q Do you know whether she was inspected prior to December last, last December a year ago?

A This September she was.

Q A year ago this September?

A Yes.

MR. CRIDER: September or December?

A December, I mean.

(Testimony of K. Lind.)

Q BY MR. MONAHAN: A year ago this December?

A Yes, sir.

Q Which December have you reference to?

A December.

Q Which December?

A 1921.

Q She was inspected in December, 1921?

A Yes.

Q Where?

A At San Francisco.

Q You are sure she wasn't inspected before that time?

A No.

Q You are sure that she was inspected during the month of December last?

A Yes.

Q You are sure of that?

A Yes.

Q You also testified, did you not, that there was no dolphin ahead of the dredge operating over there off the Blinn Lumber Company yard?

A I never did.

Q Was there a dolphin there?

A That I couldn't say because I never took any notice.

Q When you heard the cry "Man overboard!", did you not testify you walked from the lumber pile to the port side near where the Captain was standing?

(Testimony of K. Lind.)

A Yes, walked all around.

Q Then where did you go after walking all around?

A I walked right aft to the boat.

Q You saw this man in the water then?

A Yes, I saw him in the water.

Q And you kept looking where the man was in the water?

A And I say, "We better get the boat over".

Q Then you noticed the boats were coming?

A From the dredges.

Q And you also noticed the pilot boat was coming there?

A Yes.

Q And you kept looking at them and seeing what they were doing?

A Yes.

Q How long were you in that position of observation?

A I guess from the time I go from fore to aft, about three or four minutes, something like that.

MR. MONAHAN: That is all.

FURTHER RECROSS EXAMINATION
BY MR. CRIDER:

Q You hollered at the Captain right away, did you?

A Yes, I hollered right away.

Q With reference to the edge of the boat, how close up to the very edge of the boat was this lumber piled?

(Testimony of K. Lind.)

A It was very close up to the edge, right on the edge.

Q Piled up to the very edge of the boat?

A Yes, sir.

MR. CRIDER: That is all.

(At this point the Court took a recess for a few minutes).

K. LIND,

recalled for further

CROSS EXAMINATION

BY MR. CRIDER:

Q Now, Mr. Lind, is it not a fact that, when this vessel is empty, when there is not any lumber on the deck—let us suppose his Honor's table here is the deck.

A Yes.

Q Take the lumber off of it—for instance, this is the lumber that was on it the day that man fell overboard—remove that lumber. Isn't it a fact that the side of the vessel, or call it the bulwarks, extends up about three and a half feet?

A Yes.

Q And that is above the floor of the deck?

A Yes, all around it.

Q That is what I mean. Just as I have got this book, it would extend around the edge of the vessel—like that (illustrating with book)?

A Yes.

Q About three and a half feet?

A Yes.

(Testimony of K. Lind.)

Q In this case the lumber was piled in here like these books are, so it was piled up over that (illustrating)?

A Yes, close to the rail.

Q Right flush to the rail and piled up here, and this man had his sling on top here (illustrating)?

A Yes, right on top here.

Q That is what I mean. I think that clears that up.

Q BY THE COMMISSIONER: Was that rail taken off or just the lumber piled over the top of the rail?

A The lumber was piled on top of the rail.

Q The rail was still there, but the lumber was piled over it?

A Yes.

Q BY MR. CRIDER: When you are moving about, here and there in the channel, it is not customary to put a rail around the lumber cargo?

A I never seen it.

MR. MONAHAN: I object to that as incompetent, irrelevant, and immaterial.

THE COMMISSIONER: That wasn't done in this case, however.

MR. CRIDER: No, we concede that.

THE COMMISSIONER: Your objection will be overruled. Let it stand.

Q BY MR. CRIDER: You have been in the habit of loading lumber for many years and hauling it around in the—

MR. MONAHAN: That is not in evidence.

(Testimony of K. Lind.)

MR. CRIDER: I am asking him if that is not the fact.

A Yes.

Q In all your experience, when you are moving across the channel from one lumberyard to another, or moving about inside, not at sea but inside, have you ever known in your experience or seen them put a rail around the top of the lumber?

A Never.

MR. MONAHAN: Objected to as incompetent, irrelevant, and immaterial. We are not concerned with what others have done.

MR. CRIDER: I am talking about the custom.

THE COMMISSIONER: The objection will be overruled. The answer stands.

Q BY MR. CRIDER: Regardless of the boats you were on, have you observed other boats moving about here and there in and about the channel with loads of lumber on them?

A Yes.

Q Did you ever seen one with a—

MR. MONAHAN: Same objection.

THE COMMISSIONER: Same ruling.

MR. CRIDER: Let me finish.

Q —ever see a load of that kind with a rail around the top of the lumber?

A No, sir.

Q Would it be practical to have a rail around there when they are loading and unloading lumber?

A No.

(Testimony of K. Lind.)

Q BY THE COMMISSIONER: Was this man working on the boat on this lumber prior to the boat's moving from the wharf? Had he begun to work there before the boat got under way?

A Well, he started in at 8 o'clock.

Q And what time did you move?

A About a couple of minutes past.

Q And he was working there at the time you left?

A Yes.

Q Was he notified that you were going to move the boat?

A Yes, everybody was notified.

Q Everybody was notified?

A Everybody knowed it.

Q BY MR. CRIDER: Did you tell him you were going to move it?

A It was hollered out, "We're going to move; let go of the lines".

Q He was actually working on his sling when the boat was moving out in the water there?

A Yes.

Q Preparing his sling as the boat moved along?

A Yes.

Q The intention being to move on across the channel and unload some of this lumber?

A Yes.

MR. CRIDER: That is all.

REDIRECT EXAMINATION

BY MR. MONAHAN:

Q Did you notify the deceased that you were

(Testimony of K. Lind.)

shoving off from the dock and getting under way?

A Yes.

Q Eh?

A Yes.

Q Did you tell him personally?

A Not personally; but I told everybody, I say, "Let go the lines; we are going to move".

Q By "letting go the lines, we are going to move", you had reference to the mooring lines?

A Yes.

Q The longshoremen or stevedores have nothing to do with the mooring of the vessel?

A If we want them to, yes. If we want them to let go the lines, help us pull them in, or anything, they will do so.

Q How many deckhands have you got on the Brunswick, or did you have last April on the Brunswick?

A Five men,—four men.

Q Four men?

A Yes, sir, besides the longshoremen.

Q And you use longshoremen for mooring and unmooring a ship, do you?

A Yes, sir.

Q In addition to loading and unloading the cargo?

A Yes, sir.

Q And there was no rail on the outboard side of this pile of lumber?

A No, sir.

MR. CRIDER: You mean on top, do you?

(Testimony of K. Lind.)

MR. MONAHAN: Yes.

Q BY MR. MONAHAN: On two occasions you have testified there was no rail at all abreast of that lumber.

MR. CRIDER: What do you mean by abreast of it?

MR. MONAHAN: Outboard, each side.

Q And on two other occasions you have testified that there was.

MR. CRIDER: I don't think that is true.

MR. MONAHAN: The Court will remember it. And counsel illustrated to you by these books here, and you have testified on the last two occasions that the lumber was piled right over, indicating in this manner.

A Yes.

Q Are those two answers or series of answers correct?

A They both of them are.

MR. MONAHAN: All right. That's enough for me.

Q BY THE COMMISSIONER: Were any other longshoremen on this lumber working with the deceased at the time he fell overboard?

A Yes; his partner.

Q Who was that?

A I forgot the man's name.

Q BY MR. CRIDER: Would you recall that name if you heard it, or did you ever know what his name was?

(Testimony of A. Nagel.)

A I don't know.

Q Do you see him here in the room—would you know him if you saw him?

A No, sir. He is a stranger to me.

A. NAGEL,

called as a witness on behalf of the Libelant, having been duly sworn, testified as follows:

Q BY THE COMMISSIONER: What is your name?

A A Nagel.

DIRECT EXAMINATION

BY MR. MONAHAN:

Q Will you please state your age, residence, and occupation?

A 36 years of age. Been employed for the last, practically the last ten years, as winch-driver. I am living at 1914 Santa Clara Avenue, Alameda.

Q Were you attached to and served on board the Brunswick on the 18th of April last?

A I was.

Q In what capacity?

A As winchman.

Q As winchman you are included as one of the deckhands?

A I belong to the deck crew.

Q You are one of the four men of the deck crew?

A Yes.

Q Is it true that you have got four all together, four deckhands?

(Testimony of A. Nagel.)

A I couldn't say exactly how many men we had at that particular time, but as a rule we carry a roll of eight sailors and winchman, sometimes even nine.

Q Eight seamen, you mean?

A Yes.

Q And a winchman?

A Yes.

Q That makes nine. Did you see the deceased, John H. Hoeffner, fall overboard?

A I did.

Q What, if anything, did you see when he fell overboard?

A As soon as I saw the man drop overboard, you know, I shouted at the Captain, "Man overboard!"

Q Where were you standing at that time?

A I was standing on the forecastle head, forepart of the deck-load.

Q The forecastle head?

A The forepart of the deck-load.

Q Forward?

A That is the aft end of the forecastle head.

Q Did you shout loud enough for the Captain to hear you?

A I surely did.

Q What happened after that, do you know?

A Well, at that particular time, as soon as I saw the man fall overboard, I shouted, "Man overboard!", I, myself, grabbed for the rope, sling, and tried to throw it at him. When I looked over the side with

(Testimony of A. Nagel.)

the sling in my hand I saw two men was astern already, behind the ship. The ship had passed by him.

Q Anything else come under your observation at that time?

A Well, the only thing I recollect, when these two men were putting on the sling, this man, of course, he couldn't go on the outside of this load of lumber he had piled on that sling, because this particular load of lumber was piled right on the edge of the deck-load, which is the extreme side of the ship, also the bulwarks, and he couldn't get the sling, he stood on top of the deck-load trying to pull this particular sling through there, and there was the top plank, it was a heavy plank, if I am not mistaken, a 3 by 12 redwood plank, approximately something like 18 or 20 feet long and very heavy plank, and one plank I noticed at the particular time when the man tried to put the sling on, it wasn't exactly right in place, that is, it was leaning at a slant, it was tipped; and when he stepped on there, I couldn't tell exactly how many inches the block was that they built the load on because I knew they had some job in getting the sling over, I mean towards the middle of the load, and I know the second time I saw him,—I saw him the first time when the plank tipped, and I felt even myself it wasn't a safe proposition, but he slipped a second time, and the plank tipped again and he overbalanced himself and went overboard.

Q What is the distance, approximately, from the

(Testimony of A. Nagel.)

aft end of the lumber pile the accused was standing on to the forward end where you were on?

MR. CRIDER: You don't mean the accused.

MR. MONAHAN: The deceased, I mean.

A I judge about 20 feet.

Q And you have lost the use of one eye, have you?

A I have.

Q What kind of sight have you got with the other one?

A Well, as far as looking a distance, I think I can match my eyesight with any of them.

Q How fast was the Brunswick going at the time, approximately?

A Well—

Q What speed was she making?

A According to my judgment, I should say about two or three miles, something in that neighborhood.

Q Two or three miles, or knots?

A Miles.

Q Well, three miles would be about two knots.

A A little better than two knots.

Q You had just shoved off from the San Pedro Lumber Company dock, had you, when he fell?

A We left San Pedro.

Q Just shoved off the dock?

A Shoved? I think the engine brought her off the dock.

Q BY THE COMMISSIONER: You were away from the dock, were you?

(Testimony of A. Nagel.)

A Well, that is more than I can say.

Q BY MR. MONAHAN: You say the engine brought her off the dock?

A Of course. We are not in the habit of pushing the ship off the dock.

Q I used the word—you just shoved off. How long have you been going to sea?

A I have been going to sea since 1902.

Q In the capacity of winchman?

A No. I was A. B.

Q How long have you been a winchman?

A I have been serving as winchman on this Coast, I think 1909 the first time.

Q How long have you been aboard the Brunswick?

A I have been there since, if I am not mistaken, the 12th of August, 1921.

Q Describe your routine since that time, will you, when you go to port, and how long you remain there. Let's begin when you have got a load on.

A Starting from San Francisco?

Q Yes.

A Well, we as a rule take freight San Francisco going to Ft. Bragg and remain there.

Q How long would you remain at Ft. Bragg?

A About, sometimes three days, mostly two.

Q Then you would come to where?

A To San Pedro, San Diego, Redondo.

Q What would you do at Redondo?

A Discharge lumber.

Q How long would you remain there?

(Testimony of A. Nagel.)

A That depends on how much lumber in each place, sometimes two places on the same trip.

Q You just unload and shove off?

A That is what we do after we get a cargo off. What goes in that place, we leave.

Q Just unload; and if you have cargo for the next place, you go there and discharge that?

A Yes.

Q And when you discharge that cargo, you return?

A After taking on provisions and so forth.

Q You return immediately north for another one?

A Yes.

Q And continue the operation time after time?

A Yes.

Q Do you know whether there was a lifeboat lowered or not?

A There was none lowered.

Q Do you know whether or not there were life buoys thrown?

A I didn't see the life buoy thrown, but I noticed—

Q If you didn't see it—

A I didn't say I saw it. I didn't see the life buoy thrown, I said.

Q That is all I want.

A All right. Because I wasn't aft. I was forward then, I think.

Q Was there any lumber thrown overboard?

A No, sir.

(Testimony of A. Nagel.)

Q Were you in a position to observe it if it had been thrown?

A That depends from what side it would have been thrown. To the extreme aft end I wouldn't notice it because the fore-castle head is lower than the deck-load.

CROSS-EXAMINATION

BY MR. CRIDER:

Q How many of these big plank or boards did you say there were on the sling?

A One sling load?

Q Yes.

A It wasn't a very high load. I should judge from 6, 8, 7, up to 10,—6—I couldn't tell exactly. It wasn't a very high load.

Q Did I understand you to say one of these boards was kind of twisted?

A It was, yes.

Q If I can illustrate, it might be a good idea to do it. I make no claim at being a seaman. but I think I know the outline of a boat. I have got a piece of white paper here, and I have drawn what I think is a fair representation of the outline of a boat—isn't it?

A Yes.

Q I have got an arrow indicating the direction in which the boat is going. Will you indicate on there for his Honor and for opposing counsel and for the record where this load was?

A Along here. Here is the fore-castle head.

(Testimony of A. Nagel.)

Q Wait a moment; what is this line from "1" to "2" that you have drawn?

A That is the end of the forecastle head.

Q Show where the lumber was piled?

A This particular load?

A Yes.

A That was piled about right here.

Q You have drawn a little line there indicating where lumber was piled?

A Yes.

Q I will put a dotted line, and write "lumber". That is where the lumber was piled?

A Yes.

Q I will take a piece of string I have here and you say they have a block in the bottom of the loop.

A In the bottom of the load?

Q Something like that?

Q BY THE COMMISSIONER: The bottom of the load?

A No, there is a block in the bottom of the load, so they put the sling underneath it.

Q Let's take these three lead pencils and put this string around them. That would be a kind of rough representation of the way they would hoist it?

A Yes.

Q Use this for the block; how does that go?

A You put it this way.

Q All right. Illustrate to his Honor.

A Now, this is the extreme side of the ship.

Q That is the edge of the deck?

(Testimony of A. Nagel.)

A Yes.

Q Let us refer to the sketch where the load of lumber is. This desk edge here would be the edge of the boat.

A Yes.

Q And your pencil along here would illustrate the load of lumber.

A Yes.

Q Go ahead.

A His partner, the man working with the deceased, he had the sling after they piled this load and put it underneath, and the man, in order to get this load, he had to go on top of this load.

Q You mean Mr. Hoeffner got on top?

A Yes, on top here.

Q And threw the sling there?

A Yes. The top plank of it was laying in a shape like this. It wasn't exactly straight with the others, consequently, when he stepped on it, it tipped.

Q It tipped?

A Yes. The first time I noticed it it was shaking when he stepped on it the first time. The second time it overbalanced. He had the sling and was trying to take it toward the middle of the load.

Q He had this string pulling towards the middle of the load?

A Yes. And it tipped, he overbalanced while holding onto the thing, and him dragging that sling underneath till he came to where the big hook is.

(Testimony of A. Nagel.)

Q And he went over the pile? A. The pile didn't drop.

Q But he went over the edge of it into the ocean?

A Yes, right into the Bay.

Q The lumber was piled how high above the floor of the deck?

A How high?

Q Yes; the lumber this sling was on.

A Well, the sling was on top of the deck-load, and the deck-load, according to my estimation, is about 9 feet, or in the neighborhood of 9 feet, above the deck itself.

Q It is true there is a bulwark that extends up above the floor of the deck?

A Yes.

Q And then the lumber was piled up on top of that bulwark about nine feet and the sling was on top?

A I don't think it was 9 feet; it may be.

Q I mean—I didn't mean 9 feet from the top of the bulwark—I mean from the deck itself.

A Yes.

Q Now, did the Brunswick have any life buoys on it at that time?

A It did.

Q How many?

A Four, as far as I remember. I never counted them.

Q I understand you to say that you did not, yourself, see a life buoy thrown from the Brunswick?

A No, I didn't.

(Testimony of A. Nagel.)

Q Did you see the life buoys immediately after this man fell overboard—did you see any of the life buoys on the Brunswick?

A I don't really remember it.

Q You don't remember seeing any one of them around?

A They may—in the excitement I don't think I see a life buoy afterwards.

Q Were there any life boats on the Brunswick?

A Yes.

Q How many?

A Two of them.

Q Did you see any other boat or boats around the point where this man sank?

A I did.

Q How many were there?

A There was one launch going along the pipe line towards the northern end. I was whistling to them and shouting and they didn't hear me. And there was a pilot launch, a white-painted launch, and a skiff.

Q Did those launches or boats come up to the place where the man sank?

A The pilot boat came first. The rest of them came later on.

Q Did you see any life buoys or lines thrown from any of those boats?

A One was thrown from the pilot boat.

Q You heard the cry "Man overboard!", or you gave—

A I gave it myself.

(Testimony of A. Nagel.)

Q What happened to your boat immediately after that cry? Did it stop or slacken speed?

A Yes—

MR. MONAHAN: I object to that question as making a statement of—

A I saw the Captain—

MR. MONAHAN: —making a statement of fact for the witness to confirm.

MR. CRIDER: He stated he gave the outcry.

MR. MONAHAN: Yes; but what happened—if you stop there, he would explain what happened. You didn't stop there.

Q BY MR. CRIDER: What happened after you gave the outcry?

MR. MONAHAN: The harm is done now.

A As far as I know—I didn't see the telegraph but I know the ship slackened speed.

Q She slackened speed?

A Yes.

Q How far back of the ship was this man when he sank?

A Well, according to my judgment, I judge about two or three hundred feet.

Q Did you see him pass out of sight under the water?

A Oh, yes.

Q And did he come back up any more?

A Why, after he was alongside of the pilot boat, he had been underneath the water previously; but

(Testimony of A. Nagel.)

that was the last time I saw him alongside of the pilot boat.

Q When you saw the buoy thrown from the pilot boat, how far did it land from the man?

A It was in the neighborhood of where he sank. That's all I know. The launch itself was stopped then.

Q After he sank and didn't come up any more, did these three boats keep scouting around?

A Yes, they were around quite a while after.

Q How long did you say you had followed the sea?

A Since 1902.

Q Continuously?

A Well, almost. I have been working for about three years in logging camps. That has been lately.

Q Have you worked on lumber boats before?

A Yes.

Q I will ask you if, in your experience on lumber boats where you are inside of a harbor or channel like you were there and lumber was piled up above the bulwarks and you are moving about in the channel, did you ever see them put rails up around the top of the lumber pile?

A No.

MR. MONAHAN: Objected to as incompetent, irrelevant, and immaterial.

THE COMMISSIONER: Objection overruled.

A I never seen it done in a harbor, moving from one place to another.

(Testimony of A. Nagel.)

Q BY MR. CRIDER: Did you ever see it done on any boat other than the ones you have worked on?

A No.

MR. MONAHAN: Same objection to the last question.

THE COMMISSIONER: Same ruling. Exception.

MR. CRIDER: That is all.

REDIRECT EXAMINATION

BY MR. MONAHAN:

Q Did you see the man in the pilot boat throw the life preserver?

A Yes.

Q You saw him?

A Yes.

Q How did you know it was a pilot boat?

A I seen her afterwards again. She came alongside afterwards, right alongside of the Brunswick. I had a close view of her.

Q And you saw the man disappear in the water?

A Yes.

Q And there were three boats around in the immediate vicinity where the man was?

A There was.

Q And you were 200 feet away?

A Something in the neighborhood of that.

Q About 200 feet away?

A Two or three hundred feet.

Q Two or three hundred?

A Yes.

(Testimony of A. Nagel.)

Q And you saw that. And these boats were all on the southern side of the man, were they?

A No.

Q Some of them were on the northern side?

A No. Some came there right abreast.

Q I mean where the man was in the water, just before he disappeared, some of these boats were on the northern side of the man?

A There was one but I don't think that one turned.

Q One boat at the northern side at the time he disappeared?

A He wasn't disappeared yet.

Q I mean at the time he disappeared. I mean at the time the man disappeared, the last time.

A They were close around there.

Q One of the boats was on the northern side of the man?

A Well, that I couldn't exactly say in what position he was.

Q Would you be willing to swear all three of them were on the southern side of the man?

A No.

Q In which direction were these boats?

A I know the pilot boat was right alongside of him. In other words, that the man, when I saw him last go down, he was on the starboard side of the pilot launch.

Q You saw the man in the pilot boat throw the life preserver?

(Testimony of A. Nagel.)

A Yes.

Q Isn't it a fact that when the pilot boat came up he put his helm to starboard and veered across to the man, went past the man and put his helm to starboard?

A I don't know if he put his helm to starboard.

Q Did he go in the direction to port?

A He may have, a slight bit.

Q Wouldn't that cut your vision off from the man?

A No.

Q It wouldn't?

A It wouldn't because the man was on the starboard side of the launch.

Q When the pilot boat came up to this man, didn't he swerve his boat to one side to go around the man to try to catch him?

A No, he came right straight up to him in line—

Q And he didn't turn the bow of the boat?

A He may have turned it a fraction and passed the man, but he had the man and he last was seen on the starboard side of him.

Q He left the man on the starboard side. Didn't the boat veer off to starboard, the pilot boat?

A That she veered off to starboard?

Q Yes.

A Not that I could see.

Q He didn't?

A No.

Q You are sure of that? I want you to be sure.

A All I can remember is that she pointed straight

(Testimony of A. Nagel.)

to us, and I saw the man the last time he come up and his hand was up and he tried to grab for it.

Q And the boat at this time, the pilot boat, at this time was heading in a northerly direction?

A Maybe it was in a northerly direction.

Q It wasn't veered off to starboard or port at all?

A It may have a fraction, but it couldn't have been very much or I would have noticed it.

Q Are you a practical sailor man?

A I am.

Q How practical are you?

A Practical, absolutely. I put my time in square rigged, going around the Horn eleven times.

Q Could you answer questions as good as the previous witness?

A I think I could.

MR. MONAHAN: All right. That is all I want.

MR. CRIDER: For the purpose of the record, I would like to ask that this diagram of the ship be marked and introduced in evidence.

THE COMMISSIONER: It will be received and marked Respondent's Exhibit.

CHRISTINA M. HOEFFNER,

the Libellant, called in her own behalf, being first duly sworn, testified as follows:

Q BY THE COMMISSIONER: What is your name?

A Christina M. Hoeffner.

(Testimony of Christina M. Hoeffner.)

DIRECT EXAMINATION

BY MR. MONAHAN:

Q Will you state your age, residence, and occupation?

A I was born in 1883.

Q Were you married; if so, to whom?

A To John Hoeffner.

Q When were you married to Mr. Hoeffner?

A It will be two years the 10th of February, this coming February.

Q Have you got your marriage certificate with you?

A Yes, sir.

MR. CRIDER: Married when?

A The 10th of February.

Q A year ago?

A It will be two years this February.

Q That would be 1920?

A Yes, 1920.

Q BY MR. MONAHAN: What age did your husband give at the time?

A 35 years old.

Q What age did he give at the time of his marriage?

A Thirty-five.

THE COMMISSIONER: She said 35 at the time of his marriage.

MR. MONAHAN: I would like to introduce the marriage certificate in evidence, with permission to withdraw it.

(Testimony of Christina M. Hoeffner.)

MR. CRIDER: Sure.

THE COMMISSIONER: It will be received and marked Libelant's Exhibit A. You want it read into the record?

MR. MONAHAN: If you please.

MR. CRIDER: The reporter can copy it into the record.

THE COMMISSIONER: This is the 10th of February, 1921; you mean two years this coming February?

A Yes.

(Libelant's Exhibit No. 1 reads as follows:

Q BY MR. MONAHAN: Your husband, was he drowned while working on the Brunswick?

A Yes, sir.

Q Now, Mrs. Hoeffner, what was the state of your husband's health while you knew him—how long have you known your husband all together?

A Three years.

Q Three years before his death?

A Yes.

Q Did you keep company with him any part of that time?

A Yes, sir.

Q During the time you kept company with him and since your marriage to him, up to his death, what was the state of his health?

A I never heard him complain. He was in the best of health, a strong, big, strong man.

(Testimony of Christina M. Hoeffner.)

Q What kind of physique did the man have?

A He was over six feet tall, two hundred and some-odd pounds.

Q What average weekly pay did he give you while you were married?

A Well, about an average of \$55 a week.

Q How long had he been working as a longshoreman?

A About five months.

Q Previous to that time, where was he working?

A The Southwestern Shipyard.

Q In what capacity?

A As boss packer. Maybe Mr. Cole can tell you more about that.

Q Did you at any time during your marriage have any other means of support besides what your husband gave you?

A Not to speak of, no.

Q You were depending entirely on him for support?

A Yes, sir.

MR. MONAHAN: That is all.

Q BY MR. CRIDER: You were living with your husband at the time of his death?

A Yes, sir.

MR. MONAHAN: I would like at this time to introduce the American Table of Mortality.

THE COMMISSIONER: This will be filed and marked Libelant's Exhibit B.

(Testimony of A. W. Cole.)

Q BY MR. MONAHAN: What is the state of your health now, yourself?

A Well, I haven't felt very good since my husband died.

Q Otherwise in good health, are you?

A Yes.

A. W. COLE,

a witness called on behalf of the Libelant, being first duly sworn, testified as follows:

Q BY THE COMMISSIONER: What is your name?

A A. W. Cole.

DIRECT EXAMINATION

BY MR MONAHAN:

Q Will you state your age, residence, and occupation?

A 45 years old; oil man and shipyard worker.

Q Did you know the late John H. Hoeffner?

A 2510 East Fifth Street, Long Beach.

MR. CRIDER: What is your phone number?

A 316293.

Q BY MR. MONAHAN: Did you know the late John H. Hoeffner during his lifetime?

A For the last four years, approximately.

Q That is, four years immediately preceding his death?

A I first met him in August, 1918, I believe.

(Testimony of A. W. Cole.)

Q Were you in close contact with him at any time since you first knew him?

A Yes, sir.

Q Just tell how you became in close contact with him.

A We were both working in the Southwestern Shipyards together for about three years. Mr. Hoeffner was the head of the packing department.

Q Mr. Hoeffner was head of the packing department?

A Yes, sir.

Q Were you a subordinate of his at that time?

A Yes, sir.

Q Will you state to the Court just what the condition of his health was, his physique and health?

A The condition of his health was first class; he had a splendid physique.

Q Will you state how long he had been employed as longshoreman, to your knowledge, if you know?

A About four or five months, I believe.

Q Now, could you tell just why he was discharged from employment in the Southwestern Shipyard?

MR. CRIDER: That is incompetent, irrelevant, and immaterial.

THE COMMISSIONER: Objection sustained. However, you can ask the question and have the answer recorded for the purpose of review. Answer the question.

A He was discharged on account of the building

(Testimony of Patrick A. Gallagher.)

program of the United States Government, coming to an end, the ship-building program.

Q Do you know of your own knowledge whether he had been given assurance of employment there with the reopening of that Company?

MR. CRIDER: Same objection. We have—I don't know what you are driving at, whether he was discharged for incompetency.

THE COMMISSIONER: I cannot see the competency of it, or the relevancy.

MR. CRIDER: So far as we know, he was an exemplary man.

MR. MONAHAN: I am desiring to bring out the temporary nature of his employment and to go back to a better.

THE COMMISSIONER: Let him answer the question.

MR. CRIDER: Same objection.

THE COMMISSIONER: Same ruling.

A He had received nominal assurance, or assurance of it, I should say.

MR. CRIDER: No questions.

PATRICK A. GALLAGHER,

called as a witness on behalf of the Libelant, having been duly sworn, testified as follows:

Q BY THE COMMISSIONER: What is your name?

A Patrick A. Gallagher.

(Testimony of Patrick A. Gallagher.)

DIRECT EXAMINATION

BY MR. MONAHAN:

Q Will you state your age, residence, and occupation?

A Age 41; 141 Palos Verdes, San Pedro.

Q BY MR. CRIDER: Have you a phone?

A Yes: 149-J. Boilermaker by trade, but now longshoreman.

Q BY MR. MONAHAN: Where were you employed on April 18 last?

A I was employed by the Shipowners' Association to work the Brunswick—the S. S. Brunswick.

Q With whom did you work there?

A Well, I ain't positive whether there was six or four of us went up there; but on the way up I didn't have no working partner, and Mr. Hoeffner was going to work with Mr. Asherman. In fact I didn't have a working partner until I got aboard the ship. When we got aboard the ship they were unloading what I thought was a box of sawdust. The sailors was discharging it. Mr. Asherman was sent on the dock to loosen the lines, to let go the ship; they were going to move, that is to the Blinn Yard from the San Pedro Yard. Mr. Hoeffner came to me and said, "I'll work partners with you". I said, "Very well".

Q Is this Mr. Hoeffner, the deceased in this case?

A Yes. At that, the mate told us to go on to work. I looked at the clock in the wheelhouse. It was exactly three minutes after 8. We went forward, which I would call, well, the forward end of

(Testimony of Patrick A. Gallagher.)

the ship, to prepare the loads of lumber that was to be discharged at Blinn's, which consisted of redwood. I consider the planks about 2 by 12 and about 25 to 30 foot long. They were about 6—well, between 5 and 6 high, with a double plank, which meant about 12 inches high and about 24 inches wide. I went forward, and I got a sling, to the poop deck. There was some slings on the poop deck, that is, at the end of the lumber where the winch-driver and a man,—I forgot whether the mast stands fore or aft—yes, it stands forward, the mast, I am pretty sure. And I unloosened one of these slings and took it down and stuck it under the lumber pile, the load we had already prepared. That is, it was prepared. We didn't prepare the loads. The loads were all prepared, That was laying on the top of the deck. I shoved the sling under and where the splice connects on the string, there was threads on that splice which was hard to get through; so he leans over the load and pulls it with his hand, and he gets it pretty near through. I said, "We will pull the sling back to get it in the center of our load." Well, in doing so, he couldn't get it back. Se he stood on top of his load, exactly like that (illustrating), and he reached down to get hold of the sling and give a pull, and the board he was standing on turned, and he slipped right off back, that is, facing the ship with his back towards the water. At that time the winch-man, he hollered, "Man overboard!". I guess he and I were about the only two who seen him go overboard. I looked over the side.

(Testimony of Patrick A. Gallagher.)

The ship was going. He hit the rail, the guard on the side, with his two hands. It was just like saying one, two, three. He hit that guard with his hands, and the ship had gone by him. I had it in mind to take one of those planks and throw, but it was useless, they were too big. I thought it was the mate hollered, "Get a life buoy!" I ran aft to where this life buoy was on the starboard side. I would call it about the starboard beam, that is, the stern, and it was fastened onto the rail. There was, well, a line, it is onto the life buoy I think, it is about half inch, to my judgment, a half inch line. That line had the buoy tied to the guard rail, called a slat knot on it; a flat knot on it, a square knot is what the sailors say, and that line was wet. I tried to get that line loose, and I worked on it. Again the time I did that, we were three ship lengths away from the man in the water. The man in the water was following us, just paddling in the water. I hollered as loud as I could, and drew this man's attention that was on the dredge, with this launch and the skiff with the launch at the dredge pipe line. They heard the calls. They started over. Then the pilot boat was coming up the bay, the pilot boat seeing this launch coming across from the dredge line, that is, he drew the pilot man's attention, who wondered what he was running ahead of him for.

MR. CRIDER: I object to what the pilot man wondered.

THE COMMISSIONER: Just testify to facts.

(Testimony of Patrick A. Gallagher.)

A This is the facts. I am giving the whole, full detail, your Honor.

THE COMMISSIONER: Go ahead.

A I want to explain it the best I know how, of what I seen of it. This pilot boat looked in surprise—

MR. CRIDER: Wait a moment: I object to his saying he looked surprised.

THE COMMISSIONER: State what they did.

A The pilot man reaches back into his boat, and he gets out over the side, he reaches over the side, and the man's left hand was just about that far out of the water. I watched him sinking from his neck down, until his hands went down (illustrating)—

MR. CRIDER: Witness indicating the entire hands sticking out of the water.

A Yes. And it seems to me that the pilot boat touched the fingers, because the body was down as soon as he reached. Of course, I have seen occasions where men—

MR. CRIDER: Wait a moment. I object to some other occasions. We are talking about this accident.

THE WITNESS: All right.

Q BY MR. MONAHAN: Just confine yourself to facts within your own knowledge.

A The boat circled around where the body went down. The pilot boatman threw the life buoy, and this buoy that I took, I dropped it. Well, they circled around, and that man in the boat from the dredge, in the launch from the dredge, picked up Mr. Hoeffner's hat and gave it to the man in the pilot boat. We

(Testimony of Patrick A. Gallagher.)

were, at the time the man sunk, I judge a good six lengths of the ship from the body. Then the launch came up with the hat. Those fellows circled around there for half an hour I should judge afterwards in the bay. The pilot man came up with the hat and threw the hat aboard. I didn't know this man Hoeffner. Didn't know his name at the time. I went to his jacket. I knew where he placed his jacket and I looked to see if he had any identification in his pocket, and I found a little book with his name and address in it. So that was about as far as I know of it, with the exceptions of my going to the Captain in the pilot house.

MR. CRIDER: Wait a moment; is this in response to any question?

MR. MONAHAN: All right.

THE WITNESS: The Captain said to me—

MR. CRIDER: Wait a moment.

MR. MONAHAN: Q Were you in a position, or, if in position, did you notice whether or not the Brunswick stopped after the man went overboard?

A No, sir, not till the man sunk.

Q Now, do you know whether or not the engines backed?

A I have rode ships enough—

MR. CRIDER: Just a moment—

A —to indicate—

THE COMMISSIONER: Do you know whether it backed or not?

A No, sir.

(Testimony of Patrick A. Gallagher.)

Q You mean you don't know?

A I know that she didn't back.

Q BY MR. MONAHAN: How could you tell from where you were standing whether or not the engine of the Brunswick backed or not?

A You can tell by the vibration of the engines when a ship is going astern. When a ship is proceeding ahead and the engine is turned over, the vibration of that engine will almost jar you off your feet.

Q Now, were there any efforts made by the officers or crew of the Brunswick to effect a rescue of the deceased while in the water?

MR. CRIDER: I object to that as calling for a conclusion of the witness. He might tell what was done.

THE COMMISSIONER: I think you better re-frame your question. I will sustain the objection.

Q BY MR. MONAHAN: Did anybody from the Brunswick throw a life buoy overboard for the deceased?

A No, sir.

MR. CRIDER: That calls for a conclusion of the witness. The question is whether he saw anybody.

Q BY MR. MONAHAN: Did you see anybody throw a life buoy?

A No, sir.

Q Were you in a position to see that, if a life buoy had been thrown you would have observed it?

A Yes, sir.

(Testimony of Patrick A. Gallagher.)

Q And did you see one in the water?

A Seen one threw off the pilot boat, the only one.

Q I mean from the Brunswick.

A There was none thrown from the Brunswick. The only one was thrown from the pilot boat.

Q Was the life boat lowered from the Brunswick?

A No, sir.

Q Were there any pieces of lumber or other things thrown over?

A No, sir.

Q What were the officers and men of the Brunswick doing at the time?

A Well, indeed, I don't know. One of the mates sent two of the sailors back on the port side and had the life boat just as the man sank. The mate said it was no use lowering it.

CROSS EXAMINATION

BY MR. CRIDER:

Q You saw them back there working at the life boat, did you?

A They stood there; they didn't attempt to do anything.

Q You didn't see them do anything with the life boat?

A No, they didn't attempt. Just stood there looking around.

Q You used this illustration: that he fell off one, two, three. Now, what was it you say he struck there when he fell?

A The guard.

(Testimony of Patrick A. Gallagher.)

Q What guard was that?

A On the side of the ship.

Q That is, the guard on the side of the ship?

A Yes.

Q And he struck that?

A Yes, he hit it with his hands.

Q He didn't grab hold of it?

A No, he couldn't. It is just like that desk. He slid off it.

Q And he went right over?

A Yes.

Q But there was a bulwark there, wasn't there; there was a guard there?

A There is a guard on every one of those ships, yes, sir.

Q These boats you were talking about, the pilot boat and the other boat, were all circling around there, back and forth around this place where he grabbed for his hat?

A Yes.

Q And they continued to circle around there, and finally, after circling around, one of them came up and threw the hat on board the Brunswick?

A Yes, sir.

Q That is, after they had scouted about there for some time in an effort to find the man?

A No, the pilot boat didn't scout around much.

Q The other—

A The other boats did, the row boat and skiff did. The launch from the dredge did.

(Testimony of Patrick A. Gallagher.)

Q In other words, after they threw the buoy and reached and just barely missed his hand—did he touch his hand?

A I imagine he did.

Q After that, these other two boats, to use everyday language, scoured around there back and forth over this place?

A Yes.

Q And all around?

A Yes, sir.

Q For, did you say, a period of half an hour?

A About that. I should judge about that, because they were there when we stopped at Blinn's, and we had to go up the bay around the dredge line, which was tied to—what do you call this stuck in the river—I don't know the name of them—pilots stuck in there that the pipe line was tied to. That was above the Hammond Lumberyard, come around that and into Blinn's on the other side.

MR. CRIDER: That is all.

REDIRECT EXAMINATION

BY MR. MONAHAN:

Q What kind of line was attached to this life buoy?

A I should judge it was the size of a fountain pen. A little bit bigger, maybe.

Q Like this?

A About the size of that, yes, sir.

MR. MONAHAN: I ask the Court to take note of the size of the line attached to the life buoy indicated by the size of this fountain pen.

(Testimony of Patrick A. Gallagher.)

THE COMMISSIONER: Which life buoy are you talking about?

MR. MONAHAN: The life buoy attached to the Brunswick.

Q How long were you working at this square knot you speak of, trying to get it adrift?

A Well, I have been in—

Q Never mind that.

A —tying knots all my life—

Q Answer the question; how long were you working at this knot?

A On the ship?

Q Yes.

A I should judge between four and six minutes, anyhow.

Q And you found it secured, you found the life buoy secured to the rail with a piece of line the size of a fountain pen?

A Yes, sir.

Q And tied with a square knot?

A Yes, sir.

Q And you had considerable difficulty in untying that square knot?

A Yes, sir.

Q Are you familiar with knots and splices?

A Yes, sir.

Q Would you know how to untie a square knot quickly?

A Yes, sir.

(Testimony of Patrick A. Gallagher.)

Q There wasn't any kind of slip attachment for slipping the thing through?

A No, sir. There was a slip that is, where the buoy sat into, you see, a canvas sack where the buoy sat in, but he was tied on the top of the rail so you couldn't pull the buoy off.

MR. MONAHAN: That is all.

REXCROSS EXAMINATION

BY MR. CRIDER:

Q Do you recall one of the sailors of the Brunswick coming up there when you were passing around with the buoy and throwing it overboard?

A He didn't do no such thing. The buoy was on the deck still after the man went down.

MR. CRIDER: All right.

Q BY MR. MONAHAN: You stated you had some talk with the Captain immediately after the man Hoeffner disappeared from view in the water. What did he say and what did you say to him?

MR. CRIDER: I object to that on the ground it is incompetent, irrelevant, and immaterial.

MR. MONAHAN: Part of the *res gestae*. Immediately afterwards. Immediately at the time when the circumstances were fresh in the mind—what the Captain said.

THE COMMISSIONER: That would be hearsay, wouldn't it?

MR. MONAHAN: No; *res gestae*, one of the exceptions to hearsay. Honestly, it is.

(Testimony of Patrick A. Gallagher.)

THE COMMISSIONER: Let him answer it; overruled.

A I went to the Captain; he was in the pilot house; he said to me, "The man is to blame". I said, "Now listen here, Captain; you can't blame that man; you can't blame the man and can't blame yourself". I said, "It was a pure, simple accident." "Well," he said, "I guess you are right." I said, "Those things is going to occur to any of us any day"—which he agreed with me on.

Q BY MR. MONAHAN: How long would you say the Brunswick kept her headway—how long did she remain stopped?

A Well, I should judge possibly two or three minutes, and then she proceeded on again.

Q Did she at any time gather stern during this accident, after the deceased fell, gather stern board—that is, did the vessel start to go astern?

A No, sir. No, sir.

Q She gathered no stern board.

A No, sir.

Q This dolphin that you testified about, where was the vessel in relation to that dolphin?

A In relation to the dolphin? Well, we were going toward it. I should judge we were within one or two hundred feet of it.

Q I don't mean distant from—whether you were abreast of it or astern?

A It was ahead of us.

MR MONAHAN: That's all.

(Testimony of Peter Durante.)

MR CRIDER: That's all.

THE COMMISSIONER: Call your next witness.

PETER DURANTE,

a witness called on behalf of the libelant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q BY THE COMMISSIONER: What is your name?

A Peter Durante.

BY MR MONAHAN:

Q Will you state your age, residence and occupation?

A 41 years of age. 1554 Narbonne Avenue, Lomita.

Q Have you got a phone?

A No, sir.

Q Where were you employed on the 18th of April last?

A In the U. S. Engineering Department, dredging harbor department, running a launch.

Q Will you describe the location of this dredge—did this dredge have any scows and pipe line attached?

A We have about, we were at that time, about 36 pontoons little scows, 30 to 40 feet long.

Q How many did you have?

A From 36 to 38.

Q You used them for loading pipe line?

(Testimony of Peter Durante.)

A Yes, sir.

Q How was the dredge secured?

A Secured by what we call spuds. They have two spuds in the stern of the dredge and she swings from one side, has a cable on each side.

Q Did you have a dolphin or dolphins ahead of you?

A We had a dolphin. Well, it was astern of the dredge but it was north of the dredge. The head of the dredge was facing south.

Q How far north of the dredge was the dolphin?

A Well, I should judge 500 feet at least south of the dolphin.

Q North of the dolphin.

A No, south.

Q I mean how far north of the dredge was the dolphin?

A About 500 feet.

Q Were you connected with that, was your dredge connected with that dolphin?

A The pipe line was connected to that, which pipes goes underneath the water to the mainland. We had a submerged line.

Q Would a vessel be allowed to pass between this dolphin and the dredge?

A No, sir.

Q How far away was this, approximately how far away from the San Pedro shore line was this dredge with the scows?

A From the San Pedro Lumber Company docks?

(Testimony of Peter Durante.)

Q Well, say from Kerckhoff's—

A From the San Pedro side?

Q Yes.

A Well, it is between somewhere, let's see three, about seven hundred feet. The channel is 1000 feet and we were 300 feet the other side.

Q Did you attempt to rescue a man, John H. Hoeffner on the 18th of April last?

A Yes, sir.

Q Just state the circumstances in connection with your attempt to rescue him.

A I was coming up the bay from taking the crew ashore. I was coming north, coming up. The boys was working on the pipe line, about, I should judge, five or six pontoons away from the dolphin. The pipe line was busted or something and they were working and I went up to help them. When I got there they were pointing over that way towards the Pedro side and hollering at me but the engine, gas engine making so much noise, I couldn't understand what they were saying, and I come out of the cabin of this launch and listened and I heard a fellow on the Brunswick hollering, "Go get that man". I looked over in that direction and saw the man struggling in the water. Then I didn't pay attention to anything else. I rushed over there and had to circle around at first by the stern of the—

Q Brunswick?

A Yes, sir.

Q Making a circle going to the rescue of this man?

(Testimony of Peter Durante.)

A Yes. I was going straight for him and I saw the pilot boat coming. I got out and pointed to him and he looked out and he didn't know that the man was overboard. When he saw me coming he looked, and, of course, his boat was going fast and he tried to check the boat and he reached down—of course, I had to work to avoid a collision with him. That threw me off my course. And just as the pilot boat was passing the man reached down, the man had his hand up in the air about that much out of the water.

MR CRIDER: Indicating the entire hand out of the water.

A (Continuing) He made a grab for his hand but just as he missed it, he just missed his hand, and then, of course, I tried—he went by. When he was 20 feet away from him, I should judge, he grabbed a life preserver off his launch and threw it at the man. It landed about six or seven feet from the man.

Q Which side of the vessel, that is, which side of the life boat was the deceased at the time the life buoy was thrown to him?

A Which side of the pilot boat?

Q The pilot boat.

A The starboard side. He was on the starboard side.

Q Which way was the pilot boat heading at that time?

A I should judge just about due north.

(Testimony of Peter Durante.)

Q Now, did the pilot pick up the hat of the deceased?

A No, he didn't.

Q Who did?

A A fellow by the name of Johannesen came over with a skiff and he picked the hat up after the man went down.

Q You saw it?

A Yes, and he passed it to the pilot man.

Q Did you see the Brunswick at the time the man disappeared?

A Yes, sir.

Q How far away from the deceased was the Brunswick at that time?

A I should judge between 6 and 700 feet, about three ship lengths off.

Q In which direction was the Brunswick going after you noticed, at the time that your attention was directed from her to this man in the water?

A She was kind of turned about northeast I should judge more north.

Q That is, her bow was heading over towards the east San Pedro side?

A It looked to me as if he was heading for the Blinn Lumber Company.

Q At this time did you notice, did the Brunswick back her engines?

A Well, my idea is she didn't. Of course I couldn't swear to that.

(Testimony of Peter Durante.)

Q But she did have headway on her at the time you first noticed her?

A Yes, it was still going, moving ahead.

Q At the time you first noticed her?

A Yes.

Q After you got down to where the man was did you have an opportunity to notice, or did you notice the Brunswick then?

A After the man went down, I did, yes.

Q What was she doing then, going ahead or stopped?

A After I saw the man go down I looked up and the steamer schooner was, I should judge, she was about six or seven hundred feet away from the man and at that corner of the dock.

Q Did she appear to be going ahead or stopped or backing?

A Just about laying still at that time.

Q Are you familiar with vessels of the Brunswick type?

A Why, yes.

Q Would you be able to—

A I have never been on them.

MR CRIDER: You say you have never been on them?

A No.

MR CRIDER: You are not a sailor?

A No.

MR MONAHAN: Are you a boatman?

(Testimony of Peter Durante.)

A I am registered in the U. S. Engineers as a launch master. I am running launches since 1906.

Q BY MR MONAHAN: After a vessel like the Brunswick backs, would you notice her engine churning up water?

A I could notice the wake of the water; the foam that I couldn't say.

Q You are satisfied then that the deceased never came up again that day?

A I was around there searching around at least 15 minutes after he went down.

Q Did you see any life preserver in the water other than the one thrown by the pilot?

A No, sir.

Q Did you see any plank, piece of wood, that is substantial piece of wood, or anything else, that would assist in rescuing a man in the water?

A No, sir. In fact, I looked on account of Tom Johannesen, the man who brought the hat, told me there was no plank or nothing overboard and I looked around—

MR CRIDER: I move this testimony in regard to what Johannesen said be stricken out.

THE COMMISSIONER: It will be stricken out.

Q BY MR MONAHAN: In looking around, did you see any lumber, life preserver or chest cover?

A Not only the one the pilot boat threw out. The only one I saw was the pilot boat.

Q What time was this, about?

(Testimony of Peter Durante.)

A I should judge about 8 o'clock, between 8:15 and 8:20.

Q What was the approximate distance from where you were at the time you heard the shouting from the Brunswick to where the man was in the water?

A When I started for the man?

Q Yes.

A About 700 feet.

Q And the vessel was the same distance from the man?

A Just about the same as from the pipe line, that is, up north further he was.

Q Yes. Did you see another boat coming up there to attempt to rescue the deceased?

A Besides the pilot boat?

Q Yes.

A The skiff.

Q Who was in the skiff?

A Mr Johannesen.

Q Do you know him personally?

A Yes, sir.

Q Have you known him before?

A I have known him for years, about 10 years.

CROSS EXAMINATION

BY MR CRIDER:

Q How long was the boat that you had?

A 35 feet in length.

Q Just a small launch, was it?

A 35 feet in length.

Q It was capable of moving about rapidly, was it?

(Testimony of Peter Durante.)

A Pretty rapid, 35 horsepower engine.

Q How big was this other pilot boat?

A She is a little over 40.

Q Then there was a skiff there, too?

A The skiff was coming over and he got there kind of late.

Q You all searched around there?

A After the man went down, yes.

Q BY THE COMMISSIONER: When you found out there was a man overboard, how far were you from the Brunswick?

A I should judge about 700 feet, six or seven hundred.

Q Was the man in the water between you and the Brunswick? In other words, were you further away from the man than the Brunswick was?

A I should judge we were about the same distance only I was east and the Brunswick was north.

Q About the same distance from him?

A About the same distance from him.

Q Kind of triangular, was it?

A Yes, sir. I was east and he was north from the man.

Q BY THE COMMISSIONER: And the man sank just about the time you reached the point where he was?

A Yes, just about. I should judge a minute or so afterward.

THE COMMISSIONER: That's all.

MR CRIDER: That's all.

(Testimony of Thomas Johannesen.)

(At this point the Court took a recess for five minutes.)

(After recess.)

THOMAS JOHANNESSEN,

a witness called on behalf of the libelant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q BY THE COMMISSIONER: What is your name?

A Thomas Johannesen.

BY MR MONAHAN:

Q State your age, residence and occupation, please.

A 51. U. S. Engineers Department.

Q Where?

A City of San Pedro.

MR CRIDER: What is your residence address?

A First Street, Lomita.

MR CRIDER: Have you a phone?

A No, sir.

Q BY MR MONAHAN: Where were you on April 18th last?

A I was working on the pipe line. We busted a pipe line and we was repairing it. I was working unscrewing the rubber connection that connects the pipe together.

Q Did the lumber schooner Brunswick come under your observation at that time?

A I didn't notice it before I heard someone hollering, "Man overboard".

(Testimony of Thomas Johannesen.)

Q Where did the cry of "Man overboard" come from?

A From the Brunswick.

Q Where was she at the time you heard the cry "Man overboard"?

A She was just abreast from where I was working.

Q How far away, about, was the Brunswick at that time from the man overboard?

A Oh, I guess about 300 feet.

Q What was the Brunswick doing at this time? Was she going ahead or stopped or going astern?

A She was going ahead.

Q Now, what happened when you heard the cry "Man overboard"?

A I threw my tools away and jumped in the skiff, untied the skiff and started to pull over.

Q With relation to the Brunswick how far away from the man overboard were you?

A I was about, I guess, about 800, between 7 and 800.

Q Six or eight?

A Seven or eight.

Q How far away from the man overboard was the Brunswick at the time you started to pull away?

A I guess she was about 300 feet—

Q Who else was pulling there besides yourself at that time, who else was going to the rescue?

A I didn't see anybody when I started off. When

(Testimony of Thomas Johannesen.)

I was about half ways, a little more than half ways, I see a man come with a Government launch.

Q Did you get there at the time the man went under the water?

A No. He was ahead of me. The launch went by me. When I got over there the pilot boat was there and he was drowned then.

Q Did you get there just about the time the man disappeared for the last time?

A Just about the time he went down.

Q What kind of skiff is this that you are speaking of; is it a heavy working boat or is it a little light frail boat?

A It is a heavy working skiff used on the pipe line.

Q Now, was there anybody else in the skiff but yourself?

A All alone.

Q So you pulled double sculls then?

A Yes.

Q Do you recall how the tide was at that time, ebbing or flooding?

A The tide was coming in, I guess, as far as I remember. I ain't quite sure.

Q How far away from the dock at San Pedro was the man who was in the water when you saw him?

A He was not quite midway between the wharf and the pipe line.

(Testimony of Thomas Johannesen.)

Q Not quite midway. Which side was it closest to?

A The lumber wharf.

Q What lumber wharf?

A The Kerckhoff.

Q What part of the Kerckhoff lumber yard was she close to, the southern end, the northern end or the middle?

A Right abreast from the office.

Q Abreast of the Kerckhoff Lumber Company's office. Did you see the pilot reach out his hand for the deceased?

A I didn't notice it.

Q Did you see the pilot take the hat of the deceased?

A No, I took it.

Q You took it?

A Yes.

Q A witness has been here and testified that he saw the pilot take it; are you sure you took it?

A Yes, sir. I pulled the skiff and took the hat and gave it to the man in the pilot boat.

Q How long did you remain around in the vicinity of where the deceased was?

A I was around there for about 10 and 15 minutes.

Q And he did not reappear?

A No, sir.

Q At the time that the deceased disappeared for the last time did you notice where the Brunswick was?

A He was going ahead.

(Testimony of Thomas Johannesen.)

Q How long have you been in the boating business down there at San Pedro?

A I have been on the dredge between 10 and 12 years.

Q And have you been in the boating business before that in connection with harbor work?

A Yes, I have been going to sea.

Q Are you a practical sailor man?

A Well, I been going to sea for about 20 years, more than that.

Q You are familiar then with a vessel when she is going ahead, stopping or backing?

A Yes.

Q And you are prepared to say the Brunswick was not stopped, or was she backing—by backing, I mean going astern at the time the deceased disappeared the last time?

A I couldn't say if the engine was stopped. I guess it was but I couldn't see him backing.

By backing I mean going astern, the ship actually going astern, having stern board, not what the engines were doing, but whether the vessel had stern board on?

A He was going ahead aways.

MR CRIDER: No questions.

MR MONAHAN:

May it please the Court we have got another witness. It is more or less cumulative, though testimony similar to what those others have testified to and

(Testimony of Thomas Johannesen.)

he has been ordered by you to reappear here but he has failed to show up.

MR CRIDER: I will stipulate his testimony would be the same as this man's.

MR MONAHAN: All right.

MR CRIDER: What is his name, for the purpose of the record?

MR MONAHAN: Peterson. There is Asherman, too.

MR CRIDER: I will stipulate their testimony would be the same.

MR MONAHAN: More or less of the same caliber, cumulative.

THE COMMISSIONER: All right. Was it admitted that the appointment of the administratrix was made?

MR CRIDER: We will admit that.

MR MONAHAN: That was stipulated.

THE COMMISSIONER: What about the letters of administration?

MR MONAHAN: I would like to introduce at this time, may it please the Court, the letters of administration. I have got one more witness.

WILLIAM HACK,

a witness called on behalf of the libelant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q BY THE COMMISSIONER: What is your name?

(Tesimony of William Hack.)

A William Hack.

MR MONAHAN: At this point I would like to introduce in evidence with permission to recall it, letters of administration issued to Mrs Christina Hoeffner, the libelant here.

THE COMMISSIONER: They will be received and filed and marked Libelant's Exhibit C.

Q BY MR MONAHAN: Will you state your age, residence and occupation?

A 33. 451 First Street, San Pedro.

Q What is your occupation?

A Millman, lumber man.

Q At what lumber yard are you employed?

A The Kerckhoff.

Q Were you employed there on the 18th day of April last?

A Yes, sir.

Q Did you see a man falling overboard from the Brunswick—did the lumber schooner Brunswick come under your observation on that date?

A She was going by and I thought she was coming in. I was going to catch the line. I was at the end of the dock and I seen a man floating in the water.

Q What was the Brunswick doing at this time when you saw a man floating in the water?

A She was going ahead.

Q What time was this you saw the man in the water?

(Tesimony of William Hack.)

A It was about 10 minutes after 8, quarter past, something like that.

Q Then what happened; did the Brunswick continue on its course?

A She kept on going. There was no, I seen no life preserver thrown over.

MR CRIDER: I move that be stricken out.

THE COMMISSIONER: Motion granted.

Q BY MR MONAHAN: Were you in a position to closely observe the Brunswick at that time?

A I was about 200 feet, I guess.

Q I mean, there was no intervening object between you and the Brunswick?

A No.

Q And you particularly noticed the Brunswick thinking she was coming alongside of your dock?

A She left San Pedro dock. I seen her coming and she went on by. That is how I noticed this man in the water. I was watching the boat.

Q Did you see the Brunswick throw any life preserver?

A No, sir.

Q Any piece of lumber?

A Nothing.

Q Or chest cover or other floating substance to the rescue of the man in the water?

A Not a thing.

Q How long did she continue on her course going ahead after you saw the man in the water?

A I reckon she went the other side of Kerckhoff's.

(Tesimony of William Hack.)

Q Where were you standing when you saw the man in the water?

A I was at the office of the Marine Shop, right at the end of the dock.

Q Just about how far from the southern end of the dock were you standing at that time?

A From the south end corner?

Q Yes.

A I reckon about 700 feet.

Q I say how far from the southern corner were you standing, the southern corner of the Kerckhoff dock?

A I was standing on the end.

Q What is the length of the Kerckhoff dock?

A I figure about 8 or 900 feet long.

Q And the Brunswick, when you saw her, you saw her at the northern end of the Kerckhoff lumber dock?

A Yes, sir.

Q And the man had fallen overboard from her while she was near the southern part of the dock?

A I don't get that.

MR CRIDER: I object to that as leading.

THE COMMISSIONER: Objection sustained.

Q BY MR MONAHAN: Did you see the Brunswick after the man had been in the water a little while?

A Yes, sir.

Q Did you see the Brunswick back her engines or did you see the propellers washing the water up?

A No, sir.

(Tesimony of William Hack.)

Q Did you see her at any time when she was doing anything other than going ahead?

A She didn't come back, I know that.

Q Did you notice that she backed her engines at all?

A I never noticed.

Q But you did notice the ship?

A I did notice the ship, yes.

Q How far away from the Kerckhoff dock was the deceased at the time you saw him in the water?

A I reckon about 200 feet.

Q Did you see the boats coming to his rescue?

A I seen a pilot boat.

Q Did you see the launch?

A Yes, sir, the dredger.

Q Did you see the skiff?

A Yes, sir.

Q Which Mr Johannesen had?

A Yes, sir.

Q Did you see the pilot take the hat of the deceased from the water?

A No, sir.

Q Did you see anybody take the hat?

A I know the fellow in the skiff picked up the hat.

Q You saw him pick that hat up?

A Yes, sir.

Q Did you see the man when he went down for the last time?

A Yes, sir.

Q BY MR CRIDER: These two boats and the

(Testimony of William Hack.)

skiff started around there and tried to find the fellow, trying to rescue him?

A Yes, sir.

MR CRIDER: That's all.

MR MONAHAN: That's all. Now the libelant rests subject to those two witnesses coming in.

MR CRIDER: It is stipulated their testimony would be the same as Johannesen.

MR MONAHAN: Yes.

MR CRIDER: At this time, may it please the Court, I move for a non suit on behalf of the respondents on the ground that there has been absolutely no active negligence here shown on the part of the respondents; there has been absolutely shown by the plaintiff's own case, the libelant's own case, that the vessel was seaworthy in every respect and complied with all the requirements in that regard. None of the acts of negligence which are alleged have been shown to exist and it has been shown that it was purely, absolutely, an unavoidable and inevitable accident. In other words, they have absolutely made no case, shown no active negligence as pleaded or otherwise which would entitle them to relief as against the respondent and I move for non suit on that ground.

(Discussion and arguments on motion for non suit.)

THE COMMISSIONER: I will deny the motion. You put on your testimony.

MR CRIDER: I will call Mr. Brown.

(Testimony of William O. Brown.)

WILLIAM O. BROWN,

a witness called on behalf of the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CRIDER:

Q What is your name?

A William O. Brown.

Q You were present at the time Mr Hoeffner fell overboard?

A Yes, sir.

Q And what was your occupation at that time?

A Chief Engineer of the Brunswick.

Q And where were you at the time he fell overboard?

A On the upper deck, aft.

Q Just tell what you saw there.

A I heard them holler, "Man overboard", rushed to the side and started to get a life buoy but I seen it was too late so I didn't get one.

Q Did you see anyone throw a life buoy from the Brunswick?

A Yes. Charlie, a sailor, came by and a man was trying to get one out and Charlie came up and pulled it out and throwed it overboard.

Q What is that?

A A partner of this man overboard was trying to get one out and wasn't making much of a success and Charlie, the sailor—

Q Mr Gibson?

A Yes, sir. He pulled it out and throwed it

(Testimony of William O. Brown.)

overboard astern. It lit away short of the man because he was away the other side.

Q After the cry "Man overboard" was the movement of the vessel Brunswick checked or altered in any way?

A Stopped.

Q And then what?

A Stopped for probably half a minute and full astern.

Q Full astern; then what did it do after that?

A The speed of the vessel was checked entirely and by doing so the stern went inshore, he gave her a kick ahead and backed her full speed again until she was going astern slowly and then stopped.

Q Was it possible to back that vessel directly straight backward, as you would an automobile?

A No, sir. A right handed engine always back to port.

MR MONAHAN: That is not responsive at all. I move that be stricken out as not responsive.

THE COMMISSIONER: Objection overruled.

Q BY MR CRIDER: What kind of vessel was this—what kind of engine—a right hand engine?

A Yes, sir, a right handed triple expansion engine.

Q It stopped and went back?

A Yes.

Q Did he strike anything?

A Well, if it kept going it would have went in the docks stern first.

Q After it got to that point, what then?

(Testimony of William O. Brown.)

A Kicked her ahead to straighten her out.

Q And after straightening up?

A Backed again full speed.

Q Did you see anybody make any movement to lower any life boat?

A The mate and I think it was two sailors started to get the boat ready. The mate said to get the boat ready.

Q Why wasn't that boat lowered?

MR MONAHAN: I object to that as calling for a conclusion.

MR CRIDER: If you know.

MR MONAHAN: He is an engineer. He isn't a sailor.

THE COMMISSIONER: Objection overruled.

A By the time they could have got the boat in the water the other boats were there already.

Q BY MR CRIDER: The other boats were at the point—

A —where the man was.

Q You are positive you saw Mr Gibson throw the life buoy overboard?

A Yes, sir.

Q How many life buoys were there on the boat?

A Four astern.

Q How many life boats?

A Two.

Q Did you see the man in the pilot boat around the scene where the man went down?

A Yes.

(Testimony of William O. Brown.)

Q What was he doing?

A He reached for the man and he didn't get him.

Q What did he reach with?

A His hand.

Q Did he reach with anything else?

A And he threwed him a buoy and he didn't come up so he took a boat hook and reached down all around and I guess he didn't feel anybody and he pulled the buoy back with his boathook.

Q All these men with these boats was there by the time your men got started lowering the life boat?

A Yes, sir.

Q Can a life boat be detached and lowered instantly?

A No, sir.

MR MONAHAN: I object to that as calling for a conclusion of the witness. He is not qualified even as a sailor man—chief engineer.

THE COMMISSIONER: The objection is it calls for a conclusion of the witness and he is not qualified to answer?

MR MONAHAN: Yes. Can a vessel be lowered? Let us get the facts and circumstances.

Q BY MR CRIDER: How long have you followed the sea?

A 25 years.

Q Have you seen life boats of the kind that were on the Brunswick, lowered?

A Yes, sir.

(Testimony of William O. Brown.)

Q And you know how they were equipped at that time?

A Yes, sir.

Q Equipped as those life boats were, would it be possible to lower one of them instantly?

A No, sir.

Q They had been tied up there for some time, hadn't they?

A Well, we use that boat most every time in the Mendocina dock at Fort Bragg to get the lines out with.

Q How long a time would it have taken to have lowered the life boat, that is, to detach it and everything and lower it?

MR MONAHAN: Objected to as incompetent, irrelevant and immaterial.

THE COMMISSIONER: Objection overruled.

A I should say a minute or two minutes, anyway. May be three.

Q By that time the other boats were up there?

A That depends on where your men is at the time you want to lower them.

Q Of course, the men have to get up there?

A Yes, from their work.

Q In that period of time the other boats had drawn up?

A Yes.

Q To the scene where the man went overboard?

A Yes.

Q Or where he was sinking?

(Testimony of William O. Brown.)

A Yes, sir.

Q From your experience as chief engineer of that boat would you say, with your knowledge of its equipment and its engine, would you say it was stopped and backed as quickly as it could have been?

A Yes, sir.

MR MONAHAN: Object to that as incompetent, irrelevant and immaterial.

THE COMMISSIONER: Objection overruled.

Q BY MR CRIDER: And it was impossible to back it straight back?

A Yes.

Q And having turned towards the dock it had to angle forward again?

A Yes.

MR CRIDER: Cross examine.

CROSS EXAMINATION

BY MR MONAHAN:

Q Did you see the vessel when she pointed toward the Kerckhoff lumber dock?

A Yes, sir.

Q Where were you at that time?

A Astern.

Q Can you see all the way forward?

A From either side of the house, two rooms in it, you could see clear forward.

Q You had that particular spot, did you?

A Oh, astern.

Q You were located in that particular spot at the time, were you?

(Testimony of William O. Brown.)

A I was all over the stern from one side to the other.

Q And parts of the time you were not there, were you?

A I was all over the stern all the time.

Q All over the stern all the time. And you say, the engine, you couldn't back the engine when you were going ahead slowly?

A You can back full ahead, speed ahead, from a stand, yes, sir.

Q Is there a man down there at the throttle all the time?

A Yes, sir.

Q Have you got a telegraph, engine telegraph indicator there?

A Yes, sir.

Q Suppose the captain rings "Stop"—

A —yes, sir.

Q You throw a light up?

A At stop her.

Q And full speed astern, you reverse it, don't you—that might be done in the space of an instant?

A Steam reverse.

Q Full speed astern. Do you remember what steam you were carrying at that particular time?

A 175 pounds to the square inch.

Q Would that enable you to go full speed?

A Yes, sir.

Q You had full speed steam in your boilers at this particular time?

(Testimony of William O. Brown.)

A Yes, sir.

Q Notwithstanding your testimony here and the fact that the vessel went away to the Kerckhoff Lumber Company and that men were shouting to the people across the way, you would be willing to testify, and you have testified, that they got out the life boat, they couldn't have got out the life boat?

A They could have got the life boat out but the other boats would have been there first.

Q What kind of purchase have they got for the life boats?

A Double blocks.

Q Describe the purchase?

A Well, its hard to describe it—double blocks on top, single bottom. That would cover double purchase.

Q You think so?

A I think so.

Q You don't know?

A I have helped pull them up. I know four men can pull them up, two on each end.

Q Was there any effort made to use them on that occasion?

A They were getting the lines all ready to lower.

Q They were secure at the time, were they?

A Well, to keep from rolling, that's all.

Q Yes, secure to keep from rolling—and that was the life boat, is it?

A That is one of them.

Q Which one of them did they attempt to cast adrift?

(Testimony of William O. Brown.)

A The port one.

Q And the man fell over on the starboard side, did he?

A Yes, sir.

Q And made no effort to cast the starboard life boat adrift, did they?

A No, sir. The port one is the best one to get over.

Q What was the matter with the other one?

A Nothing the matter, only they handle the port one the most. That's all.

Q BY THE COMMISSIONER: What did they do towards lowering the boat?

A Took the lines loose that was holding her on the inboard side and where the lines are wrapped around the davits, got them loose and everything ready to hoist her up and throw her over.

Q But they didn't hoist her up?

A No, sir.

Q They didn't throw her out beyond the lines?

A No, sir.

Q They didn't raise her up at all?

A I don't think they did. I wouldn't say as to that, but they didn't move her out if they did.

Q How many men did you have working on the life boat at the time? Did you have all the men that were necessary to lower it?

A Yes. There was enough men up there to lower it.

(Testimony of William O. Brown.)

Q BY MR MONAHAN: How many men were there?

A Well, there was two mates and two sailors that I know of. There might have been more. And myself. I was there in case they started to lower it.

Q BY THE COMMISSIONER: Then, when they saw there were three boats attempting to save the man, then the crew of the Brunswick did nothing further—and they stopped?

A Stopped and waited, yes, sir.

Q They did nothing after that; when they saw these other boats they didn't do anything?

MR CRIDER: That was after, if your Honor please—if I may point out—

THE WITNESS: That was just about the time they was reaching for the man.

Q BY THE COMMISSIONER: Did you see the man in the skiff start out to the rescue?

A Yes, sir.

Q And he succeeded in getting from where he started to within a few yards of the man before the man sank?

A Well, the skiff was quite a little ways away. The two launches were lots closer than he was.

Q What kind of life boat is this you have got?

A It is a standard life boat, American type, just a wooden boat, wooden life boat. It is not the Clinker type. That is one the planks lap over the other.

Q It is not a power boat, but has to be manned by oars.

(Testimony of William O. Brown.)

A Oars, yes, sir.

THE COMMISSIONER: That's all.

CROSS EXAMINATION

BY MR CRIDER:

Q These other boats you saw come in rushing up there were manned by—

A —gasoline.

MR MONAHAN: Not all.

Q Two of them were.

A Commonly called motorboats or gasoline boats.

Q And this man had sunk for the last time before they finished with their work they had started at lowering the life boats?

A Yes, sir, just about that time. When the man reached for him it was no use, because the boat was there.

Q BY THE COMMISSIONER: Were you going full speed at the time the man fell overboard?

A Well, the engine was full speed but the boat hadn't pick up headway. I will say we wasn't going more than three miles an hour, any more than that. It might have been less.

Q How far were you from the place where the man sank when you saw the boats around?

A Well, between two and three hundred feet.

Q And how close did you get to that point before you stopped and went in the other direction?

A Just about stayed in the same place. We laid there for some time, five minutes. My log book shows it was 25 minutes from—

(Testimony of William O. Brown.)

MR MONAHAN: I object to the log book.

THE COMMISSIONER: How long?

A 25 minutes from the time we got full ahead until we stopped at the dock at the other side so we must have laid 5 minutes.

Q Then you never were going backward?

A Yes, sir.

THE COMMISSIONER: That's all.

Q BY MR CRIDER: You say you were going backwards? I think you testified to that before.

A I did.

Q What were your movements backward?

A Full speed astern.

Q And as I understand it, the boat would—you couldn't with that kind of engine, go straight back?

A No, sir.

Q And you went back and that threw you towards the dock?

A It did.

Q If you had continued you would have gone into the dock?

A Yes.

Q And then you went ahead and back and picked up again?

A Yes.

Q That was a narrow channel?

A Yes, sir.

Q About how wide?

A I should say it is not more than 300 feet anyway, where the pipe lines were.

(Testimony of William O. Brown.)

Q So it would be impossible to back for any considerable distance, to back straight back?

A No, sir.

REXCROSS EXAMINATION

BY MR MONAHAN:

Q Would it be possible to back, would you be willing to state that the distance from the pipe line to the San Pedro shore was over 700 feet?

A Well, I couldn't say as to that—the judgment of that distance. I never paid much attention to it.

Q You say that the vessel was only a couple of hundred, two or three hundred feet ahead of the man in the water?

A That is what I should say.

Q Wouldn't it be possible to back down there?

A No, sir.

Q It wouldn't?

A No, it wouldn't. It might be probable if the tides were in your favor and everything.

Q Which way do you want the tide to back down there to that man?

A Well, the currents would have to swing you down.

Q You want the tide going out to back down?

A I wouldn't say.

Q Which way would you want the tide to be?

A I am not captain of the boat. I wouldn't state that.

Q Why did you testify a few minutes ago it was impossible?

(Testimony of William O. Brown.)

A It is impossible because I have tried a thousand times to—

Q And still you don't know how it could be done and how it couldn't?

A I know it can't be done.

Q Did you ever try it?

A I have seen it tried.

MR CRIDER: He testified that—

MR MONAHAN: He says it was impossible to do it.

A It would be a miracle if it was done.

Q BY MR MONAHAN: Have you ever acted as master of any kind of vessel?

A I have landed several boats.

Q Landed?

A Landed them, made a landing, if that's what you are asking for—small ones, not large ones.

Q How small?

A Up to 100 tons, something like that, I suppose.

Q How large was this vessel?

A This vessel was 500 tons, if I remember right, something like that.

Q You say you were on the aft of the ship and all over the stern?

A On the upper deck.

Q All over the upper deck. All right. You testified a few minutes ago she was going full speed astern?

A Yes.

Q How do you know she was?

(Testimony of William O. Brown.)

A Because I could feel her, and my blackboard—

Q Never mind your blackboard. I want your testimony. You testified the vessel was going astern full speed?

A I could feel it.

Q Isn't it a fact that when a ship is going ahead, the least little bit headway, and you reverse your engine, she vibrates like that, like my hand?

A No, sir, that is not a fact.

Q It isn't?

A No, sir.

Q How long have you been going to sea?

A 25 years.

Q Where?

A All over the world. A vessel that backs, there is very little vibration, very little at all. When they first start they will jerk a little, like that, and then just quiet.

Q After she gets astern the vibration ceases?

A No. After the first shot of water goes around the wheel.

Q Did this vessel have considerable vibration?

A Not so much only when she first starts back.

Q You could tell from that first start of vibration she was backing full speed?

A Yes, and I could see the water on the side.

MR MONAHAN: You are a pretty good witness.

MR CRIDER: I think so.

(Testimony of John E. Wahlgren.)

JOHN E. WAHLGREN,

called as a witness on behalf of the respondent, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR CRIDER:

Q Captain, when you stopped your vessel, after you saw the man in the water, did you back?

A Yes.

Q Just describe your movement after the vessel was stopped? What was done?

A I put the telegraph full speed astern, the moment I know the man was clear of the stern of the vessel. I don't dare to back the vessel until I know the man was passed the stern for the reason that if the wheel starts to turn, the propeller I mean, the man is at the suction of the propellers and drag this man underneath the stern and get killed that way. So the minute I noticed, or know the man was astern of the vessel, I starboard my helm to swing the vessel over a little bit and back full speed for the reason, as the chief just testified, there is no boat that you can back straight. When you start to back a vessel full speed astern she wouldn't stop immediately. I could back this boat clean around San Pedro harbor if I have room to do so, but, in this case, between the pipe line, here is 700 feet, and the vessel is 162 feet and I am back there as far as I dare, over there to the Kerckhoff yard, and, of course, I had to stop her and go ahead to not back into the dock, and, in

(Testimony of John E. Wahlgren.)

other words, I couldn't lay there and have this between—in case this boat coming up the channel, I had to let him go. I couldn't blockade the channel in any shape or form. Of course, that was a boat under way, a loaded vessel, a big vessel, which couldn't stop, to stay still until I cleared myself to back around to get to this man where he was overboard.

Q Did you see a man manning the lifeboat there?

A I noticed if anybody is getting the life boat ready but I, particularly, in handling the boat, couldn't personally go back there and superintend this work.

Q, Did you see men working at the life boat?

A Yes, sir, I did.

Q Where were these boats that came up to the point where the man went down the last time when your men ceased working with the life boat?

A The boats were right to the man where he was, the very spot that the man fell overboard. The boats were trying to save this very man and knowing these men were there, before I would ever get my boat ready and get over the side and pull to this particular spot where the man was, that man would be drowned two or three times. I considered those boats was there so far ahead of me that after the man, knowing the man was drowned with these fellows standing around there, there would not be no good of me lowering my life boat and lay around there to watch the man come floating up again. So that's why I said, "We better not lower the boat. We can't save the man. He is drowned."

(Testimony of John E. Wahlgren.)

Q These other three boats, two of them power boats, were scouting all around there at that time?

A Yes.

MR CRIDER: That's all.

CROSS EXAMINATION

BY MR MONAHAN:

Q Now, Captain, was the first mate one of the party helping to get this life boat up?

A I presume he was. As I stated—

Q I don't want your presumptions, Captain, please.

A I couldn't state for sure but as far as I know he was there.

Q Did you not testify a few minutes ago you saw the men at the boat?

A I seen them but I wasn't watching them.

Q Isn't your first mate important enough to know whether he was one of them or not?

A Excuse me, but I am handling the vessel. I don't look at them particularly when I am handling the vessel. I am taking charge of the vessel to move around and trying to get in position so I can get around and go back to this man. I can't stand there as superintendent and look for who is there.

Q As a matter of fact, you don't exactly know what they were doing?

A I know they were there to try to get the boat over. I know one man was there and the second mate. I see them. But who else was there at the time I can't state particularly. I know there were some more men there.

(Testimony of John E. Wahlgren.)

Q How many men did you notice?

A Three or four. Probably more.

Q Now, when you were shoved off from the San Pedro dock you were going about two or three miles an hour?

A I suppose. I say about that.

Q Could you not put your helm to starboard at that time and back the engine full speed?

A I did, sir.

Q And then she backed in, you say, to the Kerckhoff Lumber Company?

A Yes, sir.

Q You backed in there?

A Yes, sir.

Q Well now, Captain, why, if that is a fact, is it that you are the only witness who has testified to that fact?

MR CRIDER: I don't think so. The chief engineer just testified.

MR MONAHAN: This is an after thought. After our hand was shown here in my talk.

MR CRIDER: Oh, it might ease your mind to tell you I have known what your hand is right along.

Q Did you not testify this forenoon that there was a large steamer coming up astern?

A Exactly.

Q And that was the reason you continued on instead of backing down to him—you didn't—

A I backed the vessel to get away from the channel so to get the steamer to go by me.

(Testimony of John E. Wahlgren.)

Q To give the steamer room to pass?

A Yes, and in doing so I had to back the vessel up.

Q Did the vessel actually pass you?

A He did.

Q He did pass you?

A Yes, sir.

Q Now, Captain, what duty, if any, did you owe to a vessel behind you, astern of you?

A What duty do I owe?

Q Yes.

A Well, if he gave me a signal to pass and I see fit for him—

Q I am not asking you that. I am asking you what duty, if any, you owe to an overtaking vessel?

A To let him pass if he decides to do so.

Q You do owe that duty?

A I do. If I blow a whistle, if I am coming along, and want to pass another vessel—

Q That is your conception of the inland rules of the road, is it?

A Exactly.

Q All right. Then I am satisfied.

THE WITNESS: If he decided to pass me that is his privilege, that I let him do so.

MR MONAHAN: I have finished with this witness.

REDIRECT EXAMINATION

BY MR CRIDER:

Q You say you backed as far as you could until you came to this wharf?

(Testimony of K. Lind.)

A I did, sir.

Q And then, in order to back more you would have to pull up again?

A Yes, sir.

Q And then back again?

A Yes, sir.

Q And that all takes time?

A You bet.

Q Did you have any conversation with this man Gallagher about this accident—you heard his testimony?

A In the room, when we came over to Blinn's yard I took this Mr Gallagher in the room there to get his name and his address and particulars about it and talk this matter over and asked him what he thought about it. He states to me, "Well, its too bad this thing happened but it happened and everything possible was done to try to save this man." That's all that was said between us.

MR CRIDER: That's all.

K. LIND,

a witness called on behalf of the respondent, having been previously sworn, testified further as follows:

DIRECT EXAMINATION

BY MR CRIDER:

Q You were working at the life boat, were you, there?

A Yes, sir.

(Testimony of K. Lind.)

Q Getting it ready to swing it overboard?

A Yes, getting it ready, getting the covers off, loosening up the covers.

Q What did you do to get that ready?

A I had to clear the halyards, the halyards are generally inside the boat and the cover on the life boat—see? And then we had to get, there is a fore and aft strong-back to keep the cover in position. And I was working at that and the motor boats started to pull over towards the man so the boat would be there before we got out boat over.

Q When you started working on that life boat did you work rapidly or did you work slowly?

A We worked as fast as we could.

Q And when did you cease? That is, when did you stop trying to get the boat ready to put it overboard—where were these other boats?

A The motorboats was half way between the pipe line and the man already—positively.

Q And that was your reason for not putting the boat over?

A Yes, because that man, before we got that boat in the water, that man would be drowned. The motor boat was closer over there than we would get that boat over.

CROSS EXAMINATION

BY MR MONAHAN:

Q You say you had a hauser coiled in the life boat?

A On the port side.

(Testimony of K. Lind.)

Q And that was your working life boat?

A The working life boat.

Q And it was in the skids at the time?

A Yes.

Q And she was secure there?

A She was secure.

Q Secured for sea—that is, having lashings on?

A Yes.

Q You also had the boat cover on?

A Yes.

Q And the boat cover went over the fore and aft strong-back?

A Yes.

Q And it came down and was tied with stops around?

A Yes.

Q Both stops under the keel?

A Yes.

Q That was the position she was in at the time the man fell overboard?

A Exactly.

Q That is very satisfactory. That is absolutely satisfactory to me. You said a few minutes ago you were aft and around that part of the vessel, around the rail when the man, when the boats come around the man in the water?

A Yes.

Q You just testified now that you were lowering the boat or attempting—

A Getting the boat ready, yes.

(Testimony of C. Gibson.)

Q How can you reconcile your being in two places at the same time?

A In two places?

Q Yes.

A Well, the boat is standing in the aft part of the ship and I was aft.

Q All right, that's all.

MR CRIDER: (Addressing Mr Lind) You were not working with the life boat at the time the man fell overboard, were you?

MR LIND: No, I was in the forward part of the ship at that time.

MR CRIDER: You went up to where the life boat was?

MR LIND: Yes.

MR CRIDER: Did you hurry when you went up there?

MR LIND: I did.

C. GIBSON,

recalled, having been previously sworn, testified further in behalf of the respondent as follows:

DIRECT EXAMINATION

BY MR CRIDER:

Q Mr Gibson, did you see this man Gallagher trying to get the life preserver?

A I did. I did see Mr. Gallagher at the life preserver.

Q How was he working?

A He was working it the wrong way. He wasn't

(Testimony of C. Gibson.)

lifting it up. It was supposed to lift up. He was pulling it this way (indicating). There is two iron railings and he would have to break the iron railings or get the iron railings out to get the life preserver. There is a little piece of twine tied on this string. You lift it up and throw it overboard.

Q You break the twine?

A Yes. As soon as you lift it up the twine breaks at the same time. It is not made fast, just temporary. It is easy to break. A kid can break it.

Q You threw it overboard?

A Yes, seen it.

CROSS EXAMINATION

BY MR MONAHAN:

Q What kind of twine was this?

A Sail twine.

Q How many turns?

A Two turns.

Q And that two turns of sail twine—

A —held the line.

Q Held the coil of life line and the life preserver in the case of a heavy sea?

A Doesn't hold the life preserver. The life preserver is inside of the rack.

Q Two turns of this sail twine—

A To break.

Q You pull it with the fingers and it breaks?

A Yes.

Q You pull it up with your fingers and break it?

A Well, with your hand.

(Testimony of C. Gibson.)

Q Pull it up with your hand and you break it?

A Yes.

Q All right. That's good. That's all I want.

MR CRIDER: That's all.

THE COMMISSIONER: I want to hear from both of you. You have put on all your testimony. Have you got any rebuttal?

MR MONAHAN: I will put on Mr Gallagher again, I think.

THE COMMISSIONER: He is not one of the crew.

MR MONAHAN: He was one of the workmen aboard the ship.

MR CRIDER: What was it you wanted? Maybe I will admit it?

MR MONAHAN: That he attempted to take the lifebuoy away and found it tied securely.

MR CRIDER: I will stipulate he would so testify.

I would like, before I close my case, to put in the inspectors reports.

MR MONAHAN: The inspectors report is entirely immaterial.

MR CRIDER: Let me ask him from where he is now (addressing Captain Wahlgren) Captain, is that vessel, with regard to the life buoys and life boats in the same condition that it was in when it was inspected the last time before this accident occurred?

CAPTAIN WAHLGREN: Yes, sir.

MR MONAHAN: I object to that as incompetent,

(Testimony of C. Gibson.)

irrelevant and immaterial; calling for a conclusion of the witness.

THE COMMISSIONER: Overrule the objection.

CAPTAIN WAHLGREN: The boat is inspected once a year and all equipment that is regulation equipment on that vessel for the safety of the vessel, is on the vessel, from one year to another. The life boat is equipped the way the inspector or the rules call for. There is four life boats around the vessel for the safety of the vessel.

MR MONAHAN: Four?

CAPTAIN WAHLGREN: Life buoys. And two life boats, sufficient enough to handle the crew. That is the inspection law.

MR CRIDER: The same equipment was on at the time it was inspected, the last time before the accident, that was on at the time of the accident?

CAPTAIN WAHLGREN: Yes, sir.

THE COMMISSIONER: I will continue the matter until tomorrow morning in order that you may decide what you want to do—whether you want to submit the matter on briefs or oral argument.

MR MONAHAN: Have you rested?

MR CRIDER: Yes, except I want to introduce the reports of the inspectors.

THE COMMISSIONER: The matter will be continued until 10 o'clock tomorrow morning.

(Whereupon an adjournment was taken until 10 o'clock a. m. December 2, 1922.)

LOS ANGELES, SATURDAY, DECEMBER 2,
1922. 10:15 A. M.

MR. CRIDER: As I understand it, Mr. Monahan is willing to stipulate that the United States inspectors made an inspection of this boat before the accident happened—it has been testified that that was in December, before this accident happened—and at that time the boat Brunswick was equipped with all necessary appliances, life buoys, life boats, guards, rails, lines, and so forth, as required by law and by the regulations in the Statutes of the United States. I understand you are willing to stipulate to that, Mr. Monahan?

MR. MONAHAN: Yes. I am willing to stipulate that at the last time she was inspected by the local inspectors, if she wasn't fully equipped, they would, in the performance of their duties, compel her to be so equipped; and we will assume that she was fully equipped at that time.

MR. CRIDER: Then your stipulation means that at that time she was equipped as required by law?

MR. MONAHAN: Yes; at the last inspection, whatever time that was. Well, I didn't say life rails. The local inspectors haven't anything to do with those. You can build a ship in any manner that you like.

MR. CRIDER: All right, then. Your stipulation covers life buoys, life boats—

MR. MONAHAN: And other equipment required by statute.

MR. CRIDER: Referring to the time immediately

after the accident, a day or so after the accident, an inquiry was held, and that it was so equipped at that time.

MR. MONAHAN: No. On mature deliberation, I cannot stipulate to that for this reason: the local inspectors have no authority to do anything beyond—or are you speaking about the equipment of the vessel at that time?

MR. CRIDER: Yes.

MR. MONAHAN: Yes. I will stipulate also the local inspectors found her fully equipped at some kind of an inspection they had after the subject-matter of this libel arose.

THE COMMISSIONER: Can you fix a date at which that inspection was made?

MR. MONAHAN: Sometime shortly after April 18 last.

MR. CRIDER: Within a day or so after, Mr. Monahan?

MR. MONAHAN: Yes. That she was fully equipped?

MR. CRIDER: Yes. I would also like to offer the findings of the United States local inspectors, that is, the findings giving the result of their investigation of this accident, which I have here.

MR. MONAHAN: I object to that on the ground the local inspectors have no judicial authority to inquire into anything beyond the equipment of the ship as provided for by statute, and that, it having been conceded the vessel was fully equipped, the subject-matter of their inquiry is entirely irrelevant and immaterial, and has no bearing on the issues here.

THE COMMISSIONER: I will sustain the objection as not being the best evidence. However, it may go into the record for the purpose of preserving the record on review.

MR. CRIDER: Your Honor, may I ask that the Reporter copy this, and let the gentleman have it back?

THE COMMISSIONER: It may be copied in the record.

MR. CRIDER: Mr. Reporter, will you copy this, please?

(The following is the matter so requested to be copied:)

TRIPLICATE

File No. 981.

S.I.G.No.

Report of Casualties and Violations of Steamboat
Laws.

Name of Vessel	Brunswick-Freight steamer.
Name of Officer	John E. Wahlgren, Master.
Local District	Los Angeles, Cal.
Date of Report	May 8, 1922.
Date of Casualty or Violation	April 18, 1922.
Nature of Casualty or Violation	Accidental drowning.
Action Taken	Case investigated and dismissed.
Number of Lives lost	One.
Form 924-A.	
Department of Commerce.	
Steamboat-Inspection Service.	

11-45-77

REMARKS:

While vessel was proceeding from dock at San Pedro to dock at East San Pedro about 8:05 a.m., John Hoeffner, an American, 38 years of age, married, who boarded the vessel to work as a longshoreman, accidentally fell overboard while engaged in pulling a sling around a load of lumber being prepared for discharging upon arrival at dock. Vessel was immediately stopped and crew made ready to launch lifeboat but was not considered necessary as two launches and a skiff, being in the vicinity, went to his assistance. A life buoy was thrown to him from one of the launches, which he did not grasp, and, being unable to swim, he disappeared before assistance could be given further.

The body was found some eight days later, and coroner's jury brought in a verdict of accidental drowning. Case was investigated on April 20 and May 6, 1922, on which latter date testimony was taken from those connected with the vessel which just arrived in port.

No blame was attached to any of the licensed officers of the vessel for the mishap, and the case was, therefore, dismissed.

(Signed) S. A. Kennedy, Jr.

Carl Lehnars.

United States Local Inspectors."

MR. CRIDER: That will close our testimony, your Honor. I would like at this time to ask permission to file an amendment to my answer in the case, setting forth contributory negligence, and alleging a little

more in detail the special defense, in order to conform to certain of the proof.

MR. MONAHAN: You want to set up an affirmative plea of contributory negligence on the part of the libelant, is that it?

MR. CRIDER: Yes, Mr. Monahan.

THE COMMISSIONER: And you also asked the privilege of filing an amendment to the libel, asking for exemplary damages.

MR. MONAHAN: To conform to the evidence.

THE COMMISSIONER: Permission is granted for both of you to file your amendments. Mr. Monahan may file his amendment to the libel and Mr. Crider may also file his amendment to the answer.

MR. CRIDER: Yes. It is not for the purpose of bringing forth any new matter, but to make it conform a little more to the proof.

MR. MONAHAN: I will stipulate now, may it please the Court, that we may proceed with our argument, and that the Master consider an affirmative plea of contributory negligence is filed with the Court, and we will proceed to close the case as if this affirmative plea of contributory negligence were filed. Is that right?

MR. CRIDER: Yes; but I should like, however, to submit this case on briefs. It is an important matter.

THE MASTER: I want to ask a few questions. What was the age of this man? I don't recall the evidence. What was the evidence as to his age?

MR. CRIDER: What was his age, Mrs. Hoeffner?

MRS. HOEFFNER: He was 35 years old. He was born in 1885.

MR. CRIDER: That would make him more than 35. 38, that would be.

MR. MONAHAN: 37, he would be now. What day was he born?

MRS. HOEFFNER: October 20.

MR. MONAHAN: So this October he would be 38, and he was 37 years old last October. He was drowned in April.

THE COMMISSIONER: And he would have been 37 in October?

MR. MONAHAN: The following October; that is it.

THE COMMISSIONER: There was another witness who testified, Mr. Gallagher. Is he here this morning?

MR. MONAHAN: Mr. Gallagher went on the stand to rebut testimony, and it was stipulated by and between the proctors that he would testify that nobody on the vessel—

MR. CRIDER: Now wait a minute. He testified the same as this man Johannsen.

THE MASTER: The main thing I wanted to know was whether he testified or not to the throwing of the lifeline.

MR. MONAHAN: It was stipulated that he would so testify. The witnesses who would testify the same as Johannsen were the absent witnesses who were not here; but I put Mr. Gallagher on the stand for that purpose.

MR. CRIDER: Yes, that is true, that he would testify that there was no lifeline thrown.

THE COMMISSIONER: That is my recollection. And did you say that the other two witnesses, whose

testimony you stipulated, would be cumulative, would be along that same line?

MR. CRIDER: No, indeed.

MR. MONAHAN: That they would be just along the line of Johannsen and Durant.

MR. CRIDER: Well, as Johannsen.

THE COMMISSIONER: All right. Do you want to argue it orally, or submit it?

MR. CRIDER: I would rather submit it on briefs.

THE COMMISSIONER: Or do you want to have a partial oral argument and then submit it?

MR. MONAHAN: If he wants to submit it on briefs, I will be very glad to do it; but I wish I had known of it last night.

THE COMMISSIONER: Then the matter is submitted, is it?

MR. MONAHAN: Yes.

THE COMMISSIONER: What time do you want on your briefs?

MR. MONAHAN: I would say, while the matter is fresh in the Master's mind, let each one submit a brief and rest with that, and submit it, say, in three days.

MR. CRIDER: Oh, not three days, Mr. Monahan. That is not sufficient time.

THE COMMISSIONER: How would five, five, and five be?

MR. CRIDER: I would like to have the testimony read to your Honor, and I imagine that would take three or four days to do that. I don't like to rely entirely on my memory to those things.

THE COMMISSIONER: Are you going to have the testimony written up?

MR. CRIDER: Yes.

THE COMMISSIONER: I would like to see the testimony myself.

MR. CRIDER: I will let you have my copy, if you desire.

THE COMMISSIONER: Say five, ten, and five.

MR. MONAHAN: But I don't want ten days.

THE COMMISSIONER: Well, I will make it five for Mr. Monahan and ten days in which to reply, and Mr. Monahan five to respond, if he so desires.

MR. CRIDER: I think that ought to begin from Monday, though, your Honor.

THE COMMISSIONER: That will be the order; five, ten, and five, dating from Monday.

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION.

(Before Hon. Stephen G. Long, U. S. Commissioner.)

CHRISTINA M. HOEFFNER, as)	
Administratrix of the Estate of)	
John H. Hoeffner, deceased,)	
Libelant,)	No. 1157.
vs.)	
NATIONAL STEAMSHIP COM-)	
PANY,)	
Respondent.)	

REPORTER'S TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS.

Los Angeles, California, December 1 and 2, 1922.

[Endorsed]: FILED APR 16 1923 CHAS. N.
WILLIAMS, Clerk By R. S. Zimmerman

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate of)	
JOHN H. HOEFFNER, Deceased.	)	Civil No. 1157.
)	
	)	Libellant,
vs.	)	ASSIGNMENT
	)	OF ERRORS.
)	
NATIONAL STEAMSHIP)	
COMPANY,)	
)	
	)	Respondent.

--o--

COMES NOW the Libellant and assigns the following specifications of error as against the final decree of the court in the above entitled matter.

I.

That the Court erred in finding that the deceased was not precipitated overboard immediately upon getting to his working position, in this, that it appears from the evidence in this proceeding that the vessel was under way when the mate ordered the deceased to take his position upon the lumber and be prepared to sling the same, and at the time the Libellant was precipitated into the water the vessel had not proceeded much more than one ship's length on its course, and that from the said condition it is apparent that the deceased had only time to go to and ascend the lumber pile and had no time to determine the unsafe condition of his working position.

II.

The Court erred in holding that the finding of the Commissioner "that the place where the deceased was ordered to work, because of the condition specified, was a dangerous one" to be obviously irrelevant and entirely immaterial for the reason that before an employe can be held to have accepted his employment with the dangers incident thereto, he must have an opportunity to acquaint himself with those dangers and wherein they exist, and in the case at bar he had no such opportunity and the finding of the Commissioner is therefore not irrelevant.

III.

The Court erred in holding that the proctor for Libellant is in error in bringing *our* and the Commissioner likewise to have erred in considering the examination in relation to the seamanship of the officers and crew of the vessel for the reason that the laws of Congress require certain conditions to exist in life-saving equipment upon a vessel and the matters concerning which the officers and crew are show that they had not complied with these conditions.

IV.

The Court erred in its finding that the respondent's failure to provide life-lines, or other protection, around the top of the deckload of lumber, with the vessel under way, did not constitute negligence, for this reason, that negligence is a question of fact and the ordering of a man into a dangerous working position without the protection suggested, especially on board a vessel under

way in a narrow channel, was negligence on the part of the vessel.

V.

The Court erred in holding the deceased was precipitated overboard from the Brunswick because of his own contributory negligence in this, that the evidence does not show that the deceased had any opportunity to acquaint himself with the dangers of the position in which he was placed and not knowing the dangers of the position, he could not contribute to his own injury by acting therein.

VI.

The Court erred in its conclusion and holding that the waters of the channel rapidly carried the deceased beyond the stern of the ship, for the reason that the wash at the stern of the ship was caused by the revolution of the ship's propellor in displacing water and was due to its operation.

VII.

The Court erred in holding that the Captain of the Brunswick stopped that vessel with all celerity he could command in view the circumstances, for the reason, that in the testimony of the Captain himself, he disclaimed any intention to stop the vessel immediately for, as he testified, he could not blockade the channel because another (overtaking) vessel was coming up behind him.

VIII.

The Court erred in holding that the respondent's vessel Brunswick could not be stopped immediately on account of the fact that an overtaking vessel had to be

taken into consideration, for the reason and on the ground that there is no rule of navigation, and no rule of law, requiring an overtaken vessel to give way to an overtaking vessel, especially in an emergency of "a man overboard," and there is no evidence to show that there was an overtaking vessel in such a position that it could not be warned by usual signals of the maneuvers intended to be taken by the Brunswick and of the emergency of "man overboard."

IX.

The Court erred in holding that the inland rules of the road were inapplicable where a vessel, the one being overtaken, is compelled because of emergency arising to change its normal course of procedure and either stop, or turn around, or make any other maneuver, as there is no evidence of the existence of any exigency which would have prevented *to* Brunswick from following the ordinary rules of the road and reversing her engines in the event that it became necessary to stop on account of the existence of any unexpected condition, such as that of a man overboard. There is no rule of seamanship that requires a vessel to use more care for the protection of the vessel than for the protection of human life.

X.

The Court erred in holding that there was any duty under the conditions that existed there for the Brunswick to continue on her way without taking the ordinary care of saving the life of the man overboard.

XI.

The Court erred in holding that because of the fact that there were two or three power boats on the water in the vicinity of the vessel that the vessel had any right to rely upon their services in saving the life of the man overboard.

XII.

The Court erred in holding that the supposed fact that there were others able to act more quickly than those on the Brunswick that therefore the Brunswick was excused from proceeding to save the life of the man overboard and there is no evidence to show that the other boats were in a position to respond more quickly than the respondent's vessel.

XIII.

The Court erred in not considering the fact that there was loose lumber upon the decks of the Brunswick and that in a second of time the same could have been passed into the water immediately at hand for the deceased while in the water and that his life could thereupon have been saved and that the vessel, respondent in this case, failed to render such assistance to the deceased overboard.

XIV.

The Court erred in holding that the finding of the Commissioner that the respondent failed to respond to, provide and maintain in a reasonably fit and proper condition sufficient lifesaving appliances on board of the Brunswick was erroneous. In this that it appears from the evidence of respondent's witnesses that there were only two life boats on board respondent's ship

Brunswick. The deceased fell overboard from the starboard side of that vessel, and the port boat was the best to get over (launched) and that this port life boat had boat cover on and securely fastened under its keel, the boat itself was securely lashed and had a hawser (the smallest being 5" in circumference and 120 fathoms in length) coiled inside, and that the lines (boat falls or purchase tackle) were wrapped around the boat davits; that there were but four ring-life buoys on board and these were all stowed at the stern of the ship, and, according to the testimony of Gallagher, who spent six minutes in trying to get the life buoy adrift, was securely tied by a square knot to the rail, which when wet is very difficult to untie.

XV.

The Court erred in holding that the Brunswick was not negligent in regard to its life-saving apparatus for the reason that such life-saving apparatus was on board of the vessel as the spirit of the law requires, and that they should not only be on board but should be there in a position and condition to be used instantly when the call therefor arises, and the mere fact that all of the equipment required by law was upon the Brunswick at the time of the occurrence in question, but was not in a usable condition, does not excuse the respondent vessel from negligence in the matter.

XVI.

The Court erred in holding that the actions of the longshore man who was to work with the deceased on the vessel constituted him a partner of the deceased,

or in any manner cast upon him any responsibility, unless ordered so to do, of throwing a life-preserver to the deceased, and the evidence fails to show that such alleged partner had any knowledge of how to release a life-preserver, or that the life-preserver in question was so arranged as to easily be released as required by the shipping laws, and that it was in a position to be released instantly, and the fact that one of the sailors ran up and released it without difficulty does not excuse the vessel from negligence because the evidence shows that Gallagher had untied the knot which secured it to the rail by that time and because it does not show that the sailor who released it used it for any beneficial purpose whatsoever, as there is a question of fact as to whether he even threw it into the water.

XVII.

The Court also erred in finding that there was a likelihood that the alleged partner of the deceased prevented the sailors from acting more promptly in the matter, as the evidence fails to show it and therefore it is error to found any reason thereon why judgment should go for the respondent.

XVIII.

The Court errs in finding this, "that there is no testimony from which it might reasonably be inferred that if exercising reasonable care and promptitude a life-preserver had been thrown to the deceased he might have been able to have taken advantage of it and saved his life," for it is a matter of universal presumption that if anything is presented to a man in the water on which he could seize hold, it is natural

for him so to do and it must therefore be presumed that had a life-preserver or a stick of lumber been cast in the way of the deceased he would have saved himself.

XIX.

The Court erred in its conclusions as follows: "The deceased having fallen overboard, due to his own negligence, no recovery should be had as against the respondent unless at least it should be proven to the degree required by law, that the loss of his life thereafter was due to the neglect, want of care, and culpability of the servants of the respondent," for the reason that it is apparent from the evidence in the case and from the matters which under the law the Court must take judicial notice of that had the respondent and its servants acted promptly under the circumstances the life of the deceased would have been saved.

XX.

The Court erred in reversing and overruling the findings of the Commissioner in relation to the evidence introduced before him on the well-known ground and for the reason that the Commissioner had before him the witnesses who testified and observed their demeanor and was in a better position to determine what evidence should be accepted and what rejected in reaching a conclusion than was the Court to whom this evidence was presented, and this especially in view of the stipulation of the parties and the order of reference made in pursuance thereof.

XXI.

Finally the Court erred in sustaining the exceptions filed to the Commissioner's report, and instead of overruling the findings of the Commissioner, the same should have been sustained and a judgment ordered for the Libellant, as prayed for and as found by the Commissioner.

WHEREFORE, Libellant prays that the ruling of the Court be vacated and set aside and that the findings of the Commissioner may be sustained in this matter.

John J. Monahan,
Proctor for Libellant and Appellant.

Endorsed (ORIGINAL) No. 1157 Dept. In the District Court of the United States In the Southern District of California Southern Division. CHRISTINA M. HOEFFNER as Administratrix of the Estate of JOHN H. HOEFFNER deceased Libellant vs. NATIONAL STEAMSHIP COMPANY, Respondent. ASSIGNMENT OF ERRORS. Received copy of within this 30 day of July 1924 Joe Crider Jr. Attorneys for Respondent. John J. Monahan 212 W. Sixth St. San Pedro, California Phone 1166J Attorneys for Libellant. FILED JUL 30 1924 CHAS. N. WILLIAMS, Clerk By L. J. Cordes Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA SOUTHERN DIVI-
SION (IN ADMIRALTY)

CHRISTINA M. HOEFFNER, as)	
Administratrix of tht Estate of)	
John H. Hoeffner, deceased.)	No. 1157 Civil
Libellant and Appellant,)	NOTICE OF
vs.)	APPEAL
NATIONAL STEAMSHIP COM-)	
PANY)	
Respondent and Appellee.)	

Please take notice that the libellant, Christina M. Hoeffner as Administratrix of the Estate of John H. Hoeffner, hereby appeals from the final decree made and entered herein on the 4th day of February, 1924, and from each and every part thereof, to the next United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit, at the City of San Francisco, State of California.

To: The National Steamship Company,
respondent and Joe Crider, Jr., Esq.,
proctor for Respondent.

Charles N. Williams, Esq., Clerk.

Dated San Pedro, California
July 21st, 1924.

John J. Monahan
Procotr for Libellant
and appellant.

Endorsed (ORIGINAL) No. 1157 Dept. . . . In the District Court of the United States In the Southern District of California Southern Division. CHIRSTINA M. HOEFFNER, as Administratrix of the Estate of John H. Hoeffner, deceased, Libellant

and Appellant NATIONAL STEAMSHIP COMPANY, Respondent and Appellee. NOTICE OF APPEAL Received copy of within copy of Notice of Appeal this 30 day of July, 1924, Joe Crider, Jr., Attorneys for defendant. John J. Monahan 212 W. Sixth St San Pedro, California Phone 1166J FILED JUL 30, 1924, CHAS. N. WILLIAMS, Clerk, by L. J. Cordes, Deputy Clerk, Attorneys for Libellant and Appellant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION (IN ADMIRALTY)

CHRISTINA M. HOEFFNER as)
Administratrix of the Estate of)
John H. Hoeffner, deceased.) No. 1157 Civil
Libellant and Appelant.) NOTICE OF
vs.) FILING BOND
NATIONAL STEAMSHIP) ON APPEAL
COMPANY,)
Respondent and Appellee.)

Gentlemen:

Please take notice that the Bond on Appeal herein has been this day filed in the office of the Clerk of the District Court of the United States for the Southern Disrict of California, and executed and given by The National Surety Company, New York, and duly authorized to transact a general Surety Business in the State of California.

Yours truly,

John J. Monahan

Proctor for Libellant.

and Appellant

To National Steamship Company
Respondent and appellee and
to Joe Crider, Jr., Esq., their
proctor.

Endorsed. (Original) No. 1157 Dept. . . . In the District Court of The United States In the Southern District of California, Southern Division. CHRISTINA M. HOEFFNER, as Administratrix of the Estate of John H. Hoeffner, deceased, Libellant and Appellant, NATIONAL STEAMSHIP COMPANY, Respondent and Appellee Defendant NOTICE OF FILING BOND ON APPEAL. Received copy of within copy of Notice of Filing Bond on Appeal this 30 day of July, 1924 Joe Crider Jr. Attorneys for Defendant. John J. Monahan 212 W. Sixth St. San Pedro, California Phone 1166J. FILED JUL 30 1924 CHAS. N. WILLIAMS, Clerk By L. J. Cordes, Deputy Clerk Attorneys for Libellant and Appellant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA? SOUTHERN
DIVISION

Christina M. Hoeffner,)	
Executrix of the Estate of)	
John H. Hoeffner, Deceased,	)	UNDERTAKING
Vs.	)	FOR COSTS ON
National Steamship Company	)	APPEAL
	)	Case No. 1157

WHEREAS, the Plaintiff in the above entitled action is about to appeal to the Circuit Court of Ap-

peals for the Ninth Circuit from a judgment and decree entered against her in said action in the United States District Court for the Southern District of California Southern Division, in favor of the Defendant in said action, on the 4th day of February A D 1924, for Dollars and Dollars cost of suit.

NOW THEREFORE, in consideration of the premises and of such appeal the undersigned National Surety Company, a corporation organized and existing under the laws of the State of New York, and duly authorized to transact a general surety business in the State of California, does hereby undertake and promise on the part of the Appellant that said Appellant will pay all damages and costs which may be awarded against her on the appeal, or on a dismissal thereof, not exceeding TWO HUNDRED FIFTY (\$250.00) DOLLARS, to which amount it acknowledges itself bound.

IN WITNESS WHEREOF, the said Surety has caused these presents to be executed and its official seal attached by its duly authorized Attorney in Fact at Los Angeles, California, the 15th day of July A D 1924

NATIONAL SURETY COMPANY

J. Paul Kiefer

BY

ATTORNEY IN FACT.

The premium charged for this bond is \$10.00 Dollars per annum.

Examined and recommended for approval as provided in Rule 29.

John J. Monahan
ATTORNEY

(Seal)

STATE OF CALIFORNIA)
COUNTY Los Angeles)ss.:

On this 15th day of July, in the year 1924, before me Edna Orcutt, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn personally appeared J Paul Kiefer, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of the NATIONAL SURETY COMPANY, a Corporation, and acknowledged to me that he subscribed the name of the NATIONAL SURETY COMPANY thereto as Principal and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

Edna Orcutt

Notary Public in and for said County
and State. My Commission expires
Jan. 6th 1927

F. 2393 5M 8-22

Endorsed No. 1157 Dept`..... In the District Court of the United States In the Southern District of California Southern Division. CHRISTINA M. HOEFFNER; as Administratrix of the Estate of John H. Hoeffner, deceased, Libellant and Ap-

pellant. NATIONAL STEAMSHIP COMPANY;
Respondent and Appellee Defendant BOND FILED
JUL 30 1924 CHAS N WILLIAMS, Clerk By L J
Cordes Deputy Clerk John J Monahan 212 W. Sixth
St. San Pedro, California Phone 1166J Attorneys for
Libellant and Appellant. E. R. B.

UNITED STATES OF AMERICA
District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA

Hoeffner)
Libellant,) CLERK'S OFFICE
vs.) No. 1157
National Steamship Co.) PRAECIPE
Respondent.)

TO THE CLERK OF SAID COURT:

Sir:

Please issue Libel, Claim of National Steamship Company, claim and answer, amendment to libel, commissioner's report, exceptions to report, petition for rehearing, amendment and addition to exceptions to commissioners report, minute order sustaining exceptions to commissioners report, final decree opinion, reporter's transcript of testimony, assignment of errors and notice of appeal and bond.

John J. Monahan
Proctor for libellant
and appellant.

Endorsed FILED JUN 27 1924. CHAS. N. WILLIAMS, Clerk by R S Zimmerman, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, SOUTH-
ERN DIVISION.

CHRISTINA M. HOEFFNER,)	
as Administratrix of the Estate of)	
JOHN H. HOEFFNER, Deceased.	)	Civil No. 1157.
)	
	)	Libellant,
)	
vs.)	
)	
NATIONAL STEAMSHIP)	
COMPANY,)	
)	
	)	Respondent.

CLERK'S CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 247 pages, numbered from 1 to 247 inclusive, to be the Transcript of Record on appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the libel, claim of National Steamship Company, claim and answer, amendment to libel, commissioner's report, exceptions to report, petition for rehearing, amendment and addition to exceptions to commissioners report, minute order sustaining exceptions to commissioner's report, final decree and opinion, transcript of the evidence, assignment of errors, bond, notice of appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-four, and of our Independence the One Hundred and Forty-ninth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of Cali-
fornia.

By

Deputy.

